DOCUMENT RESUME

ED 357 573 EC 302 119

AUTHOR	Autin, Diana M. T. K.; And Others
TITLE	Segregated and Second Rate: "Special" Education in New York.
INSTITUTION	Advocates for Children of New York, Inc., Long Island City.
SPONS AGENCY	Morgan Guaranty Trust Co., NY.
PUB DATE	[Nov 92]
NOTE	123p.
PUB TYPE	Viewpoints (Opinion/Position Papers, Essays, etc.) (120)
EDRS PRICE	MF01/PC05 Plus Postage.
DESCRIPTORS	Access to Education; Compliance (Legal); *Disabilities; *Educational Methods; Elementary Secondary Education; Eligibility; *Equal Education; Federal Legislation; Instructional Improvement; Instructional Materials; Intervention; *Mainstreaming; Models; Pupil Personnel Services; Racial Segregation; School Districts; *Special Education; State Legislation
IDENTIFIERS	*New York

ABSTRACT

This report claims that the special education system in the New York City public schools is by nature segregated and second rate. It offers recommendations for achieving a more inclusive, effective education for all children. Data are presented to support the charge that special education students are educated in restrictive and racially segregated environments. Administrative barriers to the inclusion of disabled children in general education classes are also identified. A section on the benefits of inclusion reviews the research and literature supporting this stand. A variety of models of inclusive education are described, including the Adaptive Learning Environments Model, the Integrated Classroom Model, consultant teaching, team teaching, cooperative learning, peer tutoring, and parent involvement. Twenty-four major recommendations are offered which would require a radical change in the current special education system. Recommendations include broadening the definition of children capable of being educated in general classrooms, improving the quality of classroom teaching, increasing the availability and quality of related services and instructional materials, and expanding the continuum of special education services. Appendices include: a discussion of federal and state law requirements addressing the least restrictive environment, evaluation and assessment, and research and program improvement; excerpts from relevant federal laws and regulations; and excerpts from relevant state law and regulations. (DB)

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SEGREGATED

& SECOND RATE:

"SPECIAL" EDUCATION IN New York

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This report was published through
a grant from Morgan Guaranty Trust.

"Integration is both legally mandated and educationally better for both 'regular' and 'special needs' students. Segregation for special education students has resulted in a separate and unequal system that isolates but doesn't educate the vast majority.... Schools should meet the instructional needs of all their students, and should have a range of classroom and support services available toward that end."

Education advocate

"...[T]here are a few children who need a segregated setting. But the vast majority do not. Children, all children, can learn in the same classroom: not just academics or skills but about differences and how to overcome them. All children can be taught together. I have two children in SIE II [Hearing Impaired] and another who is gifted. I don't raise them separately nor do I teach them separately. ***It can be done.***"

Parent who works in the New York City public schools

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ACKNOWLEDGEMENTS

This report was completed through the work of many individuals. The authors wish to thank, in particular, AFC staff members for their insightful comments and recommendations. We are grateful to Yvonne Rafferty, Research Director, for her guidance in analyzing survey results, and to Ellen Gallagher Holmes, Skadden Fellow, for her extensive editorial assistance.

For their generous support and commitment to helping New York City's most vulnerable children, the authors also thank the New York Community Trust, the Aaron Diamond Foundation, Morgan Guarantee Trust and the Skadden Fellowship Foundation. Without the assistance of these organizations, this report would not have been possible.

Finally, we thank parents, advocates, school officials and staff who answered our questionnaire in the hope that sharing their views and experiences would help to make a difference.

"Take a positive approach to learning, beginning where each child is, setting clear bench-marks to measure their individual progress, and provide all the supports they need to reach them. Learning to live with one's handicaps and those of others is part of learning to live in society."

Education advocate

PREFACE

Advocates for Children, Inc., (AFC) was founded in 1970 to obtain equal educational opportunities, promote quality education services, and overcome school failure for New York City's 1,000,000 public school students. AFC's special mission is to represent the interests of students placed at highest risk of educational failure: those who suffer educational disadvantage because of racial discrimination, poverty, educationally disabling conditions, or inadequate academic preparation. The core of AFC's program is assisting individual students and their families in obtaining appropriate quality public education services. In addition, through our research and policy analysis, we examine local, state, and national issues and their impact on children attending New York City Public Schools.

AFC's program is carried out by a multicultural, bilingual staff of attorneys, lay advocates, parent organizers, researchers and volunteers, all of whom provide individual advocacy, training, research, and assistance to communities.

Over the past twenty years, AFC has devoted particular attention to the educational needs of children with disabling conditions. We have worked to ensure their access to high quality, free public education. In this report, we focus on the segregated, second-rate nature of the "special" education system in New York and offer recommendations for achieving a more inclusive, effective education for all children in our schools.

EXECUTIVE SUMMARY

The last decade has been a time of rapid expansion in the area of special services for children with disabling conditions. In the Individuals With Disabilities Education Act (IDEA) of 1990, Congress re-authorized federal legislation requiring state and local educational agencies to provide free and appropriate education for disabled students in the least restrictive environment. The following year, almost 2.2 billion dollars was spent to maintain New York City's special education system.[1] And yet, many of the estimated 123,436 students in need of services received a second rate education.[2]

Restrictive, Racially Segregated Environments

The following statistics reveal the indisputable segregation of special education students in New York City and State:

- New York State has one of the lowest rates of least restrictive special education placement in the country. During the 1989-90 school year, New York placed only **7.12%** of its disabled students in regular classes. In contrast, the median percentage of disabled students placed in regular classes in the other forty-nine states was **37.3%**.[3]

- New York State ranked last among all states in the integrated placement of disabled students in regular classes and resource rooms: only **43.4%** of its disabled students received services in these settings. Nationwide, **68.6%** of disabled students received special education services in integrated classrooms.[4]

- New York City public schools have an exceptionally large population of students receiving special education services-- **123,436** or approximately **13%** of all students. In public schools nationwide, only **10%** of all students receive special education services.[5]

- During the 1989-90 school year, New York City public schools placed **65%** of their special education students in segregated settings, i.e., self-contained classes, special programs, private schools, and home or agency sites.[6]

- Statewide statistics reveal the over-representation of children of color in segregated special education settings. African-American students represent a disproportionate number of segregated special education placements: they constitute **19.8%** of the general education population and **34.1%** of the segregated special education population. Similarly, Latino students comprise only **15.1%** of the general education population, but represent almost **23%** of segregated special education placements. Conversely, White students comprise **59.8%** of general education students and only **41.3%** of segregated special education placements.[7]

- In New York City, African-American students represent a disproportionate number of special education students, constituting only **38%** of the general education population and **41%** of the special education population. In contrast, Latino and White students account for **35%** and **20%**, respectively, of the general education population and **34%** and **19%** of the special education population.[8]

- Children of color represent a growing number of special education students in New York City. From 1985 to 1990, the number of Latino and African-American males in special education programs jumped **11%** and **5%**, respectively. The number of White males in special education programs simultaneously decreased by **14%**.[9]

- Citywide, African-American and Latino students represent a disproportionate number of the most restrictive special education placements. In 1989-90, African-American and Latino students together comprised over **80%** of the students in self-contained special education classes and special programs. In contrast, White students represented the single largest group--**37.2%**-- of the students receiving related services only.[10]

Administrative Obstacles to De-Segregation

In educating disabled students in public schools, New York City and State have failed to preserve the basic principle that all children have the right to learn together. All too often, disabled children end up in separate buildings and/or classrooms because schools lack more integrated programs, children require

intensive services available only in restrictive settings, or administrators simply find such placement convenient. Barriers to the inclusion of disabled children in general education classrooms in New York City and State include:

- The New York State Education Department (NYSED) has failed to comply with numerous federal regulations mandating the education of disabled students in the least restrictive environment (LRE).
- New York State's special education funding formula encourages the segregation of special education students by offering low reimbursement rates for integrated placements, a narrow continuum of services for special education within the general education classroom, and too few program options between levels of service.
- In Special Circular No. 1 (1989-1990 Update), the Chancellor of New York City Public Schools codified major obstacles to including special education students in general education classrooms by establishing student-teacher ratios, limiting teacher consultation periods, and affording general education teachers the potential power to block inclusive placements.
- New York City public schools have unnecessarily delayed implementing a pilot program which utilizes the Consultant Teacher Program to serve special education and Chapter 1 students in general education classrooms.

Benefits of Inclusion

Numerous studies reveal that segregated special education of students with disabilities not only offers few, if any, benefits, but also costs, per pupil, almost twice as much as general education.[11] Furthermore, current research demonstrates that programs which include students with disabilities in general education classrooms dramatically enhance such students' academic performance, social skill development, and opportunities for gainful employment.[12] More comprehensive than academic

integration or mainstreaming, inclusion promotes the full academic, social, and physical participation of students with special needs in the general education environment. In encouraging students to accept and appreciate diversity, inclusion not only better prepares all students for life in the real world, but also fosters a society undivided by race, class, language or disability.

Recommendations for Improvement

With twenty-years experience in representing parents of children with disabling conditions in individual cases and through the Jose P. v. Sobol[13] lawsuit, Advocates for Children has consistently urged the general education system to address the needs of more children and to avoid inappropriately placing them in special education. Fortunately, numerous projects both within and without New York State have attempted to reverse the trend toward a separate educational system for children with disabling conditions and have generated many recommendations for reform. After careful consideration of these projects and our own anecdotal experience, we offer the following recommendations for New York City and State:

- NYSED should promulgate and widely circulate a policy statement which underscores its commitment to ensuring the availability of an inclusion education option for all children with disabilities.
- NYSED should compile, assess, and document available data on current inclusive models and distribute the data to all local educational agencies.
- NYSED should convene a task force of educators, advocates, and other professionals to study the inclusive programs of other states and to recommend

those programs particularly suited for implementation in New York.

- NYSED should provide school districts with informational conferences, forums, videos, and distributions regarding inclusion.

- NYSED should provide technical assistance to school districts across the state. This technical assistance should enable schools to:

  - fully comprehend the federal and State requirements pertaining to the LRE and assessment and evaluation procedures;
  - fully comprehend the current special education reimbursement formula and the waiver policy to circumvent the stringent requirements of the reimbursement formula, especially the waiver for the consultant-teacher model;
  - implement the innovative, inclusive programs which other districts in the State have successfully adopted; and
  - implement state of the art inclusive models.

- NYSED should ensure, as required by federal law, that school districts comply with federal standards pertaining to the evaluation and assessment of children for special education.

- NYSED, in conjunction with local school districts, colleges, and universities, should ensure that general education teachers receive more comprehensive training in the education of children with disabling conditions.

- The Chancellor of New York City Public Schools should update Special Circular No. 1 (Update 1989-1990), specifically formulating a policy statement that promotes full inclusion of disabled children in general education classrooms and revising current regulations which impede the implementation of inclusive programs.

- New York City Public Schools should adopt and implement the pilot program, developed by the New York City Office of Special Education Services and approved by NYSED, to employ the Consultant Teacher Program in serving special education and Chapter 1 students in general education classrooms. Once implemented and reviewed, the program must be expanded to serve a wider range of special education students in all community school districts.

- School districts should devise local initiatives to

carry out the following objectives:

- create support and informational networks for teachers to share strategies for and experiences in educating disabled children within the general education classroom;
- develop consultant-teacher and team-teaching strategies and adopt inclusive models;
- foster "natural supports," i.e., students and adults, who can provide disabled children with informal assistance or simple special education services in the general education classroom;
- strive towards school-based management with significant parent participation and create other programs through which parents can take an active role in the education of their children and community members can contribute their time and resources;
- convene committees of community leaders, professionals, parents, and teachers to establish high standards for curriculum to interest and challenge students and to establish high standards of student performance; and
- design and implement programs which frequently assess students' progress and provide remediation as necessary, such as the New York City program--Promoting Success-- which entitles third graders to summer school and remedial services in the fourth grade.

o NYSED should issue regulations which require School-Based Support Teams (SBSTs), in responding to referrals, to better document evaluation and assessment results, and to fully disclose school officials' informal assessments of students.

o NYSED should promulgate regulations which establish high standards for Individualized Education Programs (IEPs) and set forth procedures for review of substandard IEPs.

o The New York State legislature, in conjunction with NYSED, should revise the special education reimbursement formula, broaden the continuum of special education services offered in the general education classroom, and expand the program options between levels of service.

o The legislature should establish a new continuum of intermediate, preventive services which provides students with individualized support services prior to special education referral.

- NYSED should collect recommendations for a revised special education funding formula from school districts, especially those currently implementing inclusive programs through waivers.

- NYSED should thoroughly investigate New York State's failure to include special education students in general education classrooms.

- NYSED should thoroughly investigate New York State's over-representation of children of color in special education placements, especially their over-representation in the more restrictive settings.

- NYSED should scrutinize and monitor the appropriateness of instruments currently used to evaluate and assess children of color for special education.

- NYSED should convene a task force of racially and culturally diverse representatives from education agencies, nonprofit organizations, and professional associations to study and recommend revised evaluation and assessment procedures and materials for children of diverse cultural and racial backgrounds.

- NYSED should actively recruit teachers who represent different racial, ethnic, cultural, and linguistic backgrounds.

- School districts should strive to match children with evaluators who are familiar with their cultural, racial and linguistic backgrounds and who can sensitively interpret all assessments, especially un-normed tests.

- NYSED, in conjunction with local school districts, colleges, and universities, should foster culturally-sensitive attitudes in administrators and teachers.

- NYSED should encourage school districts to limit the number of students in classrooms and provide financial assistance to assist them in building more classrooms.

- NYSED should provide technical assistance to enable school districts to fully comprehend the revised special education funding formula once enacted by the State legislature.

Underlying these recommendations are two fundamental principles of educational reform. First, schools must provide the services of specially-trained personnel to children in the

classroom, rather than in pull-out programs. Providing special services directly to students will require major changes in most school districts, including: administrative leadership at the building and district level; ongoing professional development; a restructured, more open relationship between a student's home and school; the creation and implementation of adaptive curriculum and building accommodations; shared "ownership" among general and special educators; and flexible, integrated support services for children and teachers. Second, schools must include students' families as an integral part of the educational process. Administrators, teachers, and other staff must reach out in culturally and racially sensitive ways to inform families of students' activities and to encourage their participation as volunteers, members of Parent Associations, and school governance councils, or school advisors. They should also establish supportive programs for students and families confronting cultural, racial, or linguistic barriers.

Conclusion

Advocates for Children strongly recommends a radical change in the current special education system. Administrators, educators, parents, and other advocates must all work to broaden the definition of children capable of being educated in general education classrooms and eliminate the segregation of disabled children in separate special education programs. To ensure that schools meet the needs of all children in the inclusive classroom, we must also endeavor to improve the quality of

classroom teaching, increase the availability and quality of related services and instructional materials, and expand the continuum of special education services.

We are heartened by the expressed willingness of the New York State Department of Education and the New York City Board of Education to focus on the issue of inclusion. The following report aims to support that effort by identifying the extent and causes of special education segregation in New York City and State, expounding the rationale for inclusion, outlining effective strategies for change, presenting specific recommendations, and reviewing federal and State special education law.

NOTES

1. New York City Public Schools, The Chancellor's Budget Request, 1992-93, at 32.

2. Id.

3. U.S. Department of Education., Thirteenth Annual Report to Congress on the Implementation of the Individuals with Disabilities Education Act 26, A-56 (hereinafter 13th AnnualReport) (1991).

4. Id. at 21, A-56.

5. New York City Public Schools, supra note 1, at 32.

   Thirteenth Annual Report, at 3.

6. Division of Special Education, New York City Public Schools, Special Education Students in New York City Public Schools: A Racial/Ethnic Distribution 9 (1990).

7. Information Center on Education, New York State Education Department, Racial/Ethnic Data on Public School Students and Staff by School and District (1991-92).

8. Division of Special Education, New York City Public Schools, supra note 5, at 9.

9. Walter Stafford et al., Federal of Protestant Welfare Agencies, Inc., Cause for Alarm: The Condition of Black and Latino Males in New York City 14 (1991).

10. Division of Special Education, New York City Public Schools, supra note 5, at 9.

11. Beyond Separate Education: Quality Education for All 114 (Dorothy Kerzner Lipsky & Alan Gartner eds., 1989) (citing Mary T. Moore et al., U.S. Department of Education, Patterns in Special Education Service Delivery and Cost (1988)) (A recent national study examining expenditures for special education estimates that the average total cost of educating a pupil with disabilities is 2.3 times that for a general education student, or $6,335 verses $2,780 annually. For students in self-contained programs (where pupils spend approximately 28% of their school week in general education), the average total cost is $6,913, or about 2.5 times the cost for a general education pupil. Finally, the

average total cost of educating a pupil in a resource room (where pupils spend approximately 80% of their school week in general education) is $5,243, or 1.9 times the cost for a general education pupil. The authors note, however, that higher expenditures occur more often in urban, central city districts than in suburban or rural locations.).

12. See Chapter Two.

13. 669 F. 2d 865 (2nd Cir. 1982).

Introduction

INTRODUCTION

LAYING THE FOUNDATION

Advocates for Children (AFC) has created the following report based on certain assumptions regarding general education. In addition to the many recommendations set forth in the following pages, we wholeheartedly endorse the ten entitlements proposed in The Good Common School: Making the Vision Work for All Children.[1] The authors of The Good Common School assert that children are entitled to:

(1) "have parents, advocates, and concerned educators involved in all decisions affecting their education";

(2) "learn in an integrated, heterogeneous setting responsive to different learning styles and abilities";

(3) "comprehensible, culturally supportive, and developmentally appropriate curriculum and teaching strategies";

(4) "access to a common body of knowledge and the opportunity to acquire higher-order skills";

(5) "a broadly-based assessment of their academic progress and grading structures that enhance individual strengths and potential";

(6) "a broad range of support services that address individual needs";

(7) "attend schools that are safe, attractive, and free from prejudice";

(8) "attend school unless they pose a danger to other children or school staff";

(9) "instruction by teachers who hold high expectations for all students and who are fully prepared to meet the challenges of diverse classrooms"; and

(10) "an equal educational opportunity supported by the provision of greater resources to schools serving students most vulnerable to school failure."[2]

In light of these recommendations for general education, we present our recommendations for special education. Additionally, AFC has chosen to describe the process of educating all children in the general education classroom as inclusion. While experts, educators, administrators, and advocates frequently use the terms inclusion, integration, and mainstreaming interchangeably, we prefer inclusion and assign a particular definition to it.

Several experts leading the movement for educational reform, namely Susan and William Stainback, have embraced the concept of inclusion and carefully distinguish it from integration and mainstreaming. Only full inclusion, they insist, asserts that "all children need to be included in the educational and social life of their neighborhood schools and classrooms, not merely placed in the mainstream."[3] The Stainbacks also point to several important advantages which the inclusive model holds over integrated and mainstreaming models. Inclusion avoids the negative connotations implicit in integration and mainstreaming which depict children with disabling conditions as marginal students and encourage ratio-driven placement. Unlike integration and mainstreaming, inclusion calls for system-wide support services for teachers and staff personnel as well as for students. It provides educators with a more comprehensive, better conceptualized transition from segregated special education to inclusive education.[4]

In choosing to use inclusion, AFC follows the lead of noted experts and supports the progressive program which these experts

advance. Yet, for the purposes of this report, AFC relies upon the legislative and regulatory intent expressed in federal and State laws (20 U.S.C. Sec. 1412(5)(B); N.Y. Comp. Codes R. & Regs. Tit. 8, Sec. 200.6(1)) for a concise definition. Thus defined, inclusion signifies the process of educating children with disabilities "to the maximum extent appropriate ... with children who are not disabled" and providing "special classes, separate schooling, or other removal of children with disabilities from the general educational environment ... only when the nature or severity of the disability is such that education in the regular classes" constitutes inferior placement (emphasis added) (20 U.S.C. Sec. 1412(5)(B)). In maintaining that federal and State laws reflect the intent of inclusion, AFC nevertheless recognizes that many current State regulations and administrative practices undermine and obstruct inclusive education.

At this early juncture, AFC supports the inclusion of all children with disabling conditions into general education classrooms. If research should subsequently conclude that separate special education placement provides certain disabled children with the optimal educational experience, we will revise our position accordingly. Notwithstanding such unforeseen events, however, AFC wholeheartedly supports a program whereby, to the maximum extent appropriate, schools educate children with disabilities in general education classes with age-appropriate peers and teachers, paraprofessionals, and therapists who deliver

special education and other related services to children directly in the classroom.

NOTES

1. National Coalition of Advocates for Students Good Common School Project, The Good Common School: Making the Vision Work for All Children (1991).

2. Id. at 3-9.

3. Susan Stainback et al., Toward Inclusive Classrooms, in Curriculum Considerations in Inclusive Classrooms: Facilitating Learning for All Students 3 (Susan Stainback & William Stainback eds., 1992).

4. Id. at 4.

Chapter One

CHAPTER ONE

SPECIAL EDUCATION PLACEMENT:

RESTRICTIVE, RACIALLY SEGREGATED ENVIRONMENTS

Least Restrictive Environment Requirement

Federal and state laws compel New York State and its many school districts to provide education for disabled children in the least restrictive environment deemed appropriate for their needs. The Individuals With Disabilities Education Act of 1990 (IDEA)-- formerly the Education for All Handicapped Children Act, P.L. 94-142-- channels federal funds to the states for the education of children with disabilities. To qualify for funds under IDEA, states must establish and follow:

> "procedures to assure that, to the maximum extent appropriate, children with disabilities ... are educated with children who are not disabled, and that special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily." 20 U.S.C. Sec. 1412(5)(B).

Regulatory agencies and federal courts have construed IDEA to require the education of disabled children in the least restrictive environment. Thus, school districts must place children with disabilities in general education settings before assigning them to more restrictive environments.[1] School districts must also devise separate special programs in general education facilities whenever such programs are necessary to provide disabled children with an "appropriate" education.[2]

New York State law similarly requires school districts to educate children with disabilities in the least restrictive environment. Title VI, the New York State counterpart to IDEA, declares that:

> "[e]ach district shall provide to the maximum extent appropriate [special education] services in a manner which enables children with handicapping conditions to participate in regular education services when appropriate." N.Y. Educ. Law tit. 6, Sec. 4402(2)(a) (Consol. Supp. 1991).

To comply with federal and State statutes and regulations, New York State, through its Education Department (NYSED), must therefore ensure that school districts provide disabled children with education in the least restrictive environment (LRE) appropriate for their needs. (See Appendix A for a full discussion of the law pertaining to the LRE.)

Most Restrictive Environment

Despite the clearly delineated LRE requirement, school districts in New York State have one of the lowest rates of least restrictive placement in the country. Although most states roughly adhere to the federal continuum of special education services[3], the U.S. Department of Education's 1991 annual report reveals that states differ dramatically in their use of each option, particularly with regard to special placements.[4] The report further shows that New York, unlike the majority of the states, favors the most restrictive options in the continuum.

Among the fifty states, the median percentage of disabled students placed in regular classes during the 1988-89 school year was 37.3%.[5] In contrast, New York placed only 7.12% of its

disabled students in regular classes. Only Georgia and Texas ranked lower than New York in regular class placement for disabled students.[6] Alarmingly, New York ranked last among all states in the combined placement of disabled students in regular classes and resource rooms. Nationwide, 68.6% of disabled students received special education services in regular classes and resource rooms, but only 43.4% of disabled students in New York received services in similar settings. Consequently, New York placed more of its disabled students-- over 56%-- in separate classes, public separate facilities, private schools and public residential facilities than did any other state.[7]

Like public schools throughout New York State, New York City public schools have failed to supply LRE placements for many students with disabilities. New York City has a slightly larger population of students receiving special education services-- 13% of all students-- than do public schools nationwide where only 10% of all students receive special education services.[8] Nonetheless, following the State trend, New York City has placed the majority of its disabled students in segregated settings. During the 1989-90 school year, New York City public schools placed 65% of the students receiving special education services in self-contained classes, special programs, and home or agency sites.[9]

Moreover, the low rate of decertification from special education programs compounds the segregation. By the end of the 1986-87 school year, for instance, only 3.3% of all special

education students had achieved decertification and returned to general education.[10] Thus, New York City not only places its special education students in segregated settings, but leaves them there.

Within the microcosm of New York City, the severity of segregation between special education and general education students readily appears. Segregated settings exist at all grade levels. A 1992 study revealed that only 20% of the mildly or moderately disabled students in the City's community school districts received any academic integration.[11] This represents some increase over the 5% figure reported in 1986.[12] At the high school level, a 1988 study reported that Modified Instructional Services I (MIS I) and Modified Instructional Services II (MIS II) special education students attended academically integrated classes for less than half a class period per day. In addition, these "moderately or mildly" disabled students attended integrated music or physical education classes only once or twice daily.[13]

Statistics from New York City also exemplify the wide disparity between the academic performance of general and special education students. In particular, the extraordinarily low graduation rates and high dropout rates for special education students in New York City point to the failure of restrictive settings to improve or even promote student performance. In the class of 1989, only 4% of the special education students graduated at the end of four years in high school.[14] A

compilation of the graduation and dropout rates for the class of 1988 showed startling statistics for general and special education students. Only 3.5% of special education students graduated within four years while 40.1% of general education students graduated on schedule. Furthermore, prior to their scheduled graduation, 20.1% of general education students and 21.9% of special education students dropped out of school. After five and six years of high school, the statistics for special education students grew bleaker: though graduation rates rose slightly, dropout rates climbed sharply.[15]

New York City and State practices of placing the majority of special education students in the most restrictive environments thus leads to the unabashed segregation of disabled children in public schools and the failure of public schools to adequately equip disabled students for life outside the school yard. Moreover, in sustaining the segregation of special education students, New York State and New York City have facilitated the segregation of children of color.

Racially Segregated Environment

In 1990, Congress recognized the over-representation of children of color in restrictive special education placements. Findings accompanying IDEA exhibit legislative concern for the disproportionate identification and placement of children of color in special education programs:

> "[p]oor African-American children are 3.5 times more likely to be identified by their teacher as mentally retarded than their white counterparts.... Although African-Americans

> represent 12% of elementary and secondary enrollments, they constitute 28% of total enrollments in special education" 20 U.S.C. Sec. 1409(j)(1)(B)(iii)-(iv).

In adhering to the federal mandate that public schools educate all disabled students with their nondisabled peers "to the maximum extent appropriate," schools can address and correct the over-representation of children of color in special education programs (34 C.F.R. Sec. 300.305). Nonetheless, statistics for New York State and New York City reveal that children of color represent not only a disproportionate number of special education placements, but also a disproportionate number of highly restrictive special education placements.

Available statewide statistics evince the over-representation of children of color in segregated, i.e., separate, special education placements. Across New York State, African-American students constitute only 19.8% of the general education population, but represent 34.1% of the segregated special education population. Latino students comprise only 15.1% of the general education population, but similarly represent a far greater proportion of segregated special education students-- almost 23%. In contrast, White students, who constitute 59.8% of general education students, comprise only 41.3% of segregated special education placements.[16] Thus, in heterogeneous areas of the State, the over-representation of children of color in restrictive special education placements suggests a racial re-segregation of public schools.

In New York City, African-American students, unlike their

Latino and White counterparts, represent a disproportionately large number of special education placements. African-American students constitute only 38% of the general education population, but make up 41% of the special education population. Conversely, Latino and White students account for 35% and 20%, respectively, of the general education population and 34% and 19% of the special education population.[17] Nevertheless, Latino students may soon constitute a greater, and disproportionate, share of special education students. Between 1985 and 1990, the number of Latino males in special education programs jumped 11%, while the number of African-American males in special education programs climbed 5%. At the same time, the number of White males in special education programs decreased by 14%.[18]

Although Latino students comprise a proportionate number of special education placements citywide, they, like African-American students, represent an abnormally large number of the most restrictive special education placements.[19] During the 1989-90 school year, self-contained, special education classes consisted primarily of African-American and Latino students--45.7% and 38.4% respectively. Together, African-American and Latino students comprised over 80% of all special programs. In contrast, White students comprised only 13.6% of self-contained classes and represented the single largest group (37.2%) of students receiving related services only. African-American and Latino students respectively constituted only 30.4% and 26.3% of all students receiving related services.[20] Thus, White students

received related services in the mainstream much more often than African-American or Latino students even though they represented only half as many general education students.

While the statistics clearly show that New York City and State place the majority of disabled students in the most restrictive environments, the figures also indicate that they place a disproportionate number of children of color in those environments as well. The State's and City's failure to ensure LRE placements for students with disabilities has not gone unnoticed. Due to the marked unavailability of the LRE for most disabled students in the State and City, federal evaluators recently determined that the State had failed to comply with federal guidelines and, therefore, potentially jeopardized federal funding.

Noncompliance Documented

Through the Office of Special Education Programs (OSEP), the U.S. Department of Education administers the programs authorized in IDEA. In 1989, OSEP conducted an intensive monitoring of the New York State Education Department (NYSED) to determine its compliance with federal regulations. Federal evaluators visited 13 public schools and examined 112 student records, 10 public agencies' policies and procedures, and NYSED's compliance monitoring system.[21] After extensive review, OSEP concluded that NYSED had failed to comply with numerous federal regulations which require schools to educate students with disabilities in the LRE. OSEP found that NYSED failed to ensure the academic

integration of disabled students as required by 34 C.F.R. Sec. 300.550(a). This regulation compels NYSED to assure that local school districts establish and implement procedures to guarantee education in the LRE for children with disabilities (34 C.F.R. Sec. 300.550(b)-Sec. 300.554).[22] In its finding, OSEP exposed the following violations by NYSED.

> "Children with moderate to severe disabilities were, in many cases, placed in separate classes or separate schools because the particular staffing ratio[s], specific programs or services needed to implement their IEPs [Individualized Education Programs] [were] unavailable in less restrictive settings. Specifically, in regard to children with moderate to severe disabilities, NYSED did not ensure that: the various alternative placements included under Sec. 300.551 [were] available to the extent necessary to implement the IEP for each child with a disability; to the maximum extent appropriate, children with disabilities were educated with children who do not have disabilities; and children with disabilities were removed from the regular educational environment only when the nature and severity of the disability was such that education in regular classes with the use of supplementary aids and services could not have been achieved satisfactorily."[23]

In addition to NYSED's noncompliance with 34 C.F.R. Sec. 300.550(a), OSEP also found that NYSED had failed to ensure the social integration of students with disabilities as directed by 34 C.F.R. Sec. 300.553. Under this section, NYSED must make certain that schools comply with 34 C.F.R. Sec. 300.227. OSEP determined that:

> "NYSED did not meet its general responsibility to ensure that each child with a disability participated with children who did not have disabilities, to the maximum extent appropriate to the needs of the child, in the various extracurricular and nonacademic services and

> activities provided by each responsible public agency [each local school district] as required by Sec. 300.227."[24]

P.S. 721 in New York City exemplified the failure of public schools throughout the State to provide social interaction between disabled and nondisabled students. Although P.S. 721 stands only blocks away from a general education school building, it furnished no opportunities for the students in its Specialized Instructional Environment V (SIE V) program to interact with nondisabled students. This special education service category is designed to prepare students for semi-competitive or non-competitive employment. In explaining the lack of social integration and, thus, the school's reasons for ignoring the federal mandate set forth in Sec. 300.227, teachers responded that:

> "(1) the student [with a disability attending P.S. 721] would not be accepted by students who do not have disabilities; (2) the student does not have good verbal skills; (3) the student is easily frustrated and would need the assistance of a paraprofessional in a small regular class; (4) the student would 'just be isolated.'"[25]

To remedy NYSED's noncompliance with the LRE requirement, OSEP outlined two Corrective Action Plans. In both plans, OSEP required NYSED to set forth specific steps to meet federal regulations.[26] In February of 1991, NYSED submitted the plans to OSEP. The timely submittal protected NYSED against the withholding of federal funding. NYSED's specific proposals and revisions submitted in October 1991 included: a position paper, a series of public hearings, the formation of a statewide database,

amendments to regulations, and the development of LRE materials and training for teachers.[27] To date, NYSED has released no data regarding the effectiveness of its proposals.

Administrative Obstacles to Inclusion

Several New York State statutes and regulations contribute to schools' and districts' over-segregation of disabled children. Perhaps the primary barrier to the creation of inclusive programs is the State's special education funding formula which offers low reimbursement rates for integrated placements, a narrow continuum of services for special education within the general education classroom, and too few program options between levels of service. In presenting districts with few viable options for including students with disabling conditions, New York's reimbursement formula in effect promotes their segregation. Nowhere does the formula take into account the actual costs of placements.[28] Thus, school districts have little incentive to devise and implement integrated programs. While the consultant-teacher model, for example, may cost a district as much to operate as a more segregated special education program, the district would receive significantly less reimbursement for this integrated service option.[29]

No federal statute or regulation necessitates New York's limited funding formula. The Office of Special Education and Rehabilitation Services (OSERS), an agency within the U.S. Department of Education, has declared that, for purposes of federal funding, states may count students who receive special

education services within the general education classroom if these services appear on the students' Individualized Education Programs (IEPs) and meet their needs. Gloeckler, EHLR 211:367 (OSERS 1985). Furthermore, other states have adopted funding formulas that reimburse districts on the basis of the cost of the educational setting rather than the restrictiveness and/or provide financial incentives for integration to districts with high rates of segregation. Thus, in maintaining an arbitrary funding formula backed by neither federal guidelines nor accepted state practices, New York State encourages school districts to segregate students with disabilities. NYSED's reluctance to acknowledge the flaws of the formula and to propose alternatives further frustrates districts in their attempts to include disabled students in general education.

In New York City, the policies and procedures of the Chancellor likewise thwart schools and districts in their effort to develop innovative inclusive programs. Special Circular No. 1 (1989-1990 Update), for example, creates major obstacles to full inclusion.[30] Issued by the Chancellor's Office in September 1990, Special Circular No. 1 sets forth regulations and procedures for the integration of special education students within New York City public schools. The following regulations make the integration of disabled students unnecessarily tedious and capricious. First,

> "No teacher is to have a case load exceeding six (6) mainstreamed students with a maximum of three (3) students during any one instructional period. This limitation applies to all subject areas

except physical education and music classes." (Reg. 3.2.3).

Second, general and special education teachers have only three periods for consultation per semester for any integrated elementary school student. In middle schools, they have three consultation periods for each integrated class a disabled students attends (Reg. 3.2.4). As a result, teachers interested in promoting successful integrated classrooms must meet on their own time to discuss strategies and/or issues. Third, administrators must consult general education teachers before special education students may enter their classrooms (Reg. 5.1). Fourth, the special education student must have a level of achievement "comparable to the functional level of the mainstream class to which s/he will be assigned" (Reg. 5.2) and must "exhibit socially and emotionally appropriate behavior in order to function successfully in the mainstream" (Reg. 5.3).

Although the Chancellor set out to "provide increased opportunities for mainstreaming," Special Circular No. 1 fails to comply with legal requirements and generates administrative delays.[31] The regulations severely restrict inclusion opportunities on the basis of factors other than individual education needs of students and, therefore, violate federal and State laws requiring education in the LRE for disabled students.[32] Under the regulations, general education teachers have the potential power to block inclusive placements, and may request a cumbersome, time-consuming "dispute resolution" process which can cause lengthy delays in implementing integrated

placements (Reg. 3.2.5).[33] Finally, despite the serious deficiencies identified by parent and advocacy groups, the Chancellor has refused to issue an updated, corrective circular.

The failure of New York City public schools to implement the Consultant Teacher Program citywide further frustrates integration. Although the State has approved the model as an acceptable method of delivering special education services, the City has yet to establish even a pilot program. The New York City Office for Special Education Services at the urging of the United Federation of Teachers and advocacy and parent organizations has spent several years developing and gaining approval for a pilot program. This program would employ the Consultant Teacher Model in serving special education and Chapter 1 students in general education classrooms. Until recently, New York City public schools have delayed the implementation of the pilot program even though NYSED has reviewed and approved the City's proposal.[34]

Conclusion

The aforementioned statistics unequivocally demonstrate that New York State and New York City, in violation of federal and State law, have continued to place the majority of disabled students in the most restrictive special education settings. The statistics also show that the State and City have placed more African-American and Latino students in those settings and assigned White students to the less restrictive special education programs. Nevertheless, despite these statistics, OSEP's

findings, and widespread criticism of the State funding formula, New York State has failed to address the segregation of disabled students by encouraging school districts to include disabled students in general education. Likewise, New York City has dismissed criticism of Special Circular No. 1 and delayed the implementation of any citywide inclusive program, including the long-awaited pilot program based on the Consultant Teacher Program.

The over-segregation of students with disabilities must cease. Disabled students in New York City and State should not receive a second-rate education. The following chapter discusses the numerous benefits of inclusion for all children. Chapters Three and Four include specific models and recommendations for change. This information offers the State and City methods for ending the over-segregation of disabled children in special education.

NOTES

1. Eileen L. Ordover & Kathleen B. Boundy, Center for Law and Education, Educational Rights of Children with Disabilities: A Primer for Advocates 15 (1991).

   Daniel R. v. State Board of Education, 874 F.2d 1036, 1048 (5th Cir. 1989).

2. Id.

   See, e.g., Roncker v. Walter, 700 F.2d 1058 (6th Cir. 1983), cert. denied, 464 U.S. 864, 104 S.Ct. 196 (1983).

3. Thirteenth Annual Report, at A-56.

   OSEP defines the six educational environments in the following way:

   "Regular class includes students who receive a majority of their education in a regular class and receive special education and related services for less than 21 percent of the school day. It includes children placed in a regular class and receiving special education within the regular class as well as children placed in a regular class and receiving special education outside the regular class.

   "Resource room includes students who receive special education and related services for 21 to 60 percent of the school day. This may include resource rooms with part-time instruction in the regular class.

   "Separate class includes students who receive special education and related services for more than 60 percent of the school day. Students may be placed in self-contained special classrooms with part-time instruction in regular classes or placed in self-contained classes full-time on a regular school campus.

   "Separate school facility includes students who receive special education and related services in separate day schools for students with disabilities for greater than 50 percent of the school day.

   "Residential facility includes students who receive education in a public or private residential facility, at public expense, for greater than 50 percent of the school day.

"Homebound/hospital environment includes students placed in and receiving special education in hospital or homebound programs." Id. at 20-21.

4. Id.

5. Id., at 26 (Percentages refer to school children ages 6-21).

6. Id., at A-56.

7. Id., at 21, A-56.

8. New York City Public Schools, The Chancellor's Budget Request 1992-93, at 32.

   Thirteenth Annual Report, at 3.

9. Division of Special Education, New York City Public Schools, Special Education Students in New York City Public Schools: A Racial/Ethnic Distribution 9 (1990).

10. Margaret C. Wang, Effective School Responses to Student Diversity: Challenges and Prospects, Issues in Brief, Oct. 1991, at 9.

11. The Chancellor's Office of Monitoring and School Improvement, New York City Public Schools, Academic Mainstreaming in the Community School Districts. (1992).

12. Division of Special Education, New York City Board of Education, Survey of Community School District Academic Mainstreaming (1986).

13. Division of High Schools, New York City Board of Education, Mis I, Mis II, Resource Room Register, and Mainstream Curriculum Index (1988).

14. Walter Stafford et al., Federation of Protestant Welfare Agencies, Inc., Cause for Alarm: The Condition of Black and Latino Males in New York City 13 (1991).

15. After five years of high school, the graduation rate of special education students in the Class of 1987 rose to 4.9%; the graduation rate for general education students in the same class hit 46.6%. The dropout rate for special education students in the Class of 1987 climbed to 31.3% while the rate for general education students reached 28.4%.

    After six years of high school, the graduation rate of special education students in the Class of 1986 increased to 13.8% while the corresponding rate for general education students rose to 54.1%. The dropout rate for special

education students after six years of high school jumped to 37.5%; the dropout rate for general education students rose to 27.3%.
Prudence Opperman & Richard D. Gampert, Office of Research, Evaluation, and Assessment, New York City Board of Education, The Cohort Report: Four-Year Results for the Class of 1988 and Follow-Ups of the Classes of 1986 and 1987 i (1989).

16. Information Center on Education, New York State Education Department, Racial/Ethnic Data on Public School Students and Staff by School and District (1991-92).

17. Division of Special Education, New York City Public Schools, supra note 9, at 9.

18. Stafford et al., supra note 13, at 14.

19. The New York City Public Schools include the following three categories among its special education programs:

Self-contained classes administer Modified Instructional Services (MIS) programs. Students with learning disabilities, educable mental retardation, behavioral problems, hearing impairments or sight impairments usually attend classes in general education facilities and have limited interaction with their nondisabled peers (e.g. during gym, recess, and lunch).

Special Programs handle Specialized Instructional Environment (SIE) programs. Autistic, emotionally disturbed, moderately mentally retarded, severely hearing- or sight-impaired students attend special programs which do not confer diplomas. These students have virtually no opportunities for integration with their nondisabled peers.

Advocates for Children, Inc., Education Advocacy Training Manual 62 (1991).

Related Services consist of "[r]egularly scheduled services that are necessary to support students' primary instructional programs (includ[ing] Speech/Language Therapy, Hearing Education, Vision Education, Counseling, Occupational Therapy, Physical Therapy, Health Services and other Support Services.)"

Division of Special Education, New York City Public Schools, supra note 9, at 8.

20. Division of Special Education, New York City Public Schools, supra note 9, at 9.

21. Office of Special Educational Programs, U.S. Department of Education, Final Monitoring Report: 1989 Review of New York State Education Department iii (1990).

22. Id., at 8.

23. Id., at 9.

24. Id., at 12.

25. Id., at 13.

26. Id., at 11-12, 13-14.

27. Letter and attached document from Thomas E. Sheldon, Executive Deputy Commissioner of Education, New York State Education Department, to Judy A. Schrag, Director, Office of Special Education Programs, U.S. Department of Education, 8-12 (Jan. 31, 1991).

    Memorandum from Thomas B. Neveldine, Assistant Commissioner for Special Education Services, New York State Education Department, to District Superintendents et al. (Jan. 1992).

28. New York Bar Association, Legislative Incentives for Segregated Special Education Program. (forthcoming Sept. 1992) (manuscript at 16-21, on file with author).

29. Cf. Paula J. Hepner & P. Crull, Public Education Association, Mainstreaming in New York: Children Caught in the Currents, 46 (1984) (citing J. Kakalik et al., U.S. Department of Education, The Cost of Special Education: Summary of Study Findings, R-2858-ED (1981) (A comprehensive national cost study found that mainstreamed classes constitute the second most expensive educational placement.)).

30. Joseph A. Fernandez, Chancellor, New York City Public Schools, Special Circular No. 1, 1989-1990- Update (Sept. 28, 1990).

31. Id., at 2.

32. Tamalpais (CA) Union High School District, EHLR 353:126 (OCR 1988) (The Office of Civil Rights (OCR), a division of the U.S. Department of Education, recently held that a similar policy resulting from a collective bargaining agreement between a California high school district and the local teachers' association violated the least restrictive environment requirement by excluding students from general education classes solely on the basis of their disabling condition.).

33. Fernandez, supra note 27, at 7.

34. Memorandum from Arthur L. Walton, Deputy Commissioner, Office for Elementary, Middle & Secondary Education, New York State Department of Education, to the Members of the Board of Regents Subcommittee on Special Education Issues in New York City 3 (June 17, 1992). (Statewide, more schools have implemented similar pilot programs, but these schools have acquired innovative program waivers. Only truly aggressive schools, therefore, have managed to implement such programs. New York Bar Association, supra note 27, at 22-24.) As this report went to press, however, the Chancellor distributed a "Special Circular No. 2" inviting SBM/SDM schools and schools under state review to participate voluntarily in a consultant teacher services initiative for the 1992-93 school year. Schools that submit an acceptable proposal will receive a planning grant of $1,000 toward designing their Consultant Teacher Initiative plan. Memorandum from Joseph A. Fernandez, Chancellor, New York City Public Schools, to Members of the Board of Education et al. (July, 1992).

Chapter Two

CHAPTER TWO

BENEFITS OF INCLUSION

Introduction

Although the United States Supreme Court, recognizing the harmful effects of separating children by race, ruled segregated education unconstitutional over forty years ago,[1] segregation in schools persists today in the strict separation of children with and without disabling conditions. For the last twenty years, educational experts have compiled evidence of the many harmful effects of placing children with disabilities in separate special education classes, schools, or residential facilities. Statistical analyses show that segregated special education unequivocally legitimizes and promotes racial segregation.[2] Nationwide, studies of special education programming have revealed a disproportionate number of children of color, particularly in the most segregated placements.[3]

Research also demonstrates that segregated special education engenders what Chief Justice Warren in Brown v. Board of Education of Topeka, KS, 347 U.S. 483, 493 (1954), aptly termed a "feeling of inferiority as to [children's] status in the community that may affect their hearts and minds in a way unlikely ever to be undone." Two studies (Kelly, 1972; Oakes, 1982) reported that, among all students, students designated as "lower track" have the lowest self-esteem. Similarly, other studies (Shafer & Olexa, 1971; Alexander & McDill, 1976) indicated that lower-track placement actually decreased students'

self-esteem.[4]

In addition to the over-representation of children of color in special education and the leveling of special education students' self-esteem, leading experts (Stainback & Stainback, 1984) have concluded that the strict division between general and special education students has created a "dual system" which pits general educators against special educators.[5] Encouraging competition, duplication, and inefficiency in general and special education programs, the dual system discourages collaboration, cooperation, teaching innovations, and cost savings.[6] The inclusion of children with disabling conditions into general education can not only eradicate the harmful effects of segregated special education, but also afford substantial benefits.

Academic Gains

Education research demonstrates that, unlike children in segregated special education, children with disabling conditions who participate in general education actually profit from the experience. Overall, experts (Gartner & Lipsky, 1987; Carlberg & Kavale, 1980) have concluded that segregated special education offers inconsistent, if any, benefits to students.[7] As one study in Vermont (Bloomer et al., 1982) revealed, approximately half of the learning disabled students failed to reap the anticipated rewards of special education.[8] Experts examining the integration of children with disabilities into the general education classroom, on the other hand, have found positive gains in

educational and social development. Because few schools have achieved full inclusion system-wide, available research focuses upon small-scale integrated programs, i.e., programs integrating only one grade level or one classroom within a school, wherein students with disabling conditions participate in general education for most or part of the school day.[9] Thus, in describing research results, we use the term integration and maintain the aforementioned distinction between integration and inclusion.

Significant and widespread educational gains of integrated students appear in numerous studies. A comprehensive analysis (Gartner & Lipsky, 1987) of fifty studies of the academic achievement of children with disabling conditions showed that "the mean academic performance of the integrated group was in the 80th percentile, while the segregated students scored in the 50th percentile."[10] In a more recent study (Wang & Reynolds, 1989), integrated students academically outperformed segregated students by an average of six months. Unlike the students in special classes, the integrated students had continuous, consistent instruction from the same teacher in the same setting and missed less general classroom instructional time receiving outside special education services.[11] Furthermore, researchers (Brinker & Thorpe, 1984; Wang & Baker, 1986) have found that, among students with severe disabilities, integrated students attained more of the objectives set forth in their Individualized Education Programs (IEPs) than did segregated students.[12]

Social Gains

Although disabled children have made impressive educational gains in integrated environments, they have achieved even greater social proficiency. Research investigating the social development of children with disabilities clearly establishes that integration into general education stimulates social development, while segregated special education retards it. A recent two-year study (Cole & Meyer, 1991) of students, who ranged from profoundly mentally retarded to moderately mentally retarded with multiple disabling conditions, found that students integrated into general education with peer supports gained social competence. Specifically, integrated children

> "generally improved in their ability to manage their own behavior in social situations, provide negative feedback to others, accept assistance from others, indicate personal preferences to others, cope with negative social circumstances, and terminate social contact."[13]

In contrast, students in segregated special education regressed in their social competence. The authors of the study attributed the dramatic differences in social development to the amount of social interaction between the disabled students and other individuals. Although integrated and segregated students spent the same amount of time with special education teachers, integrated students spent more time with teaching assistants, more time with other students with and without disabling conditions, and more time in community programs outside of school. Segregated students spent more time with therapists and more time alone than did integrated students.[14] An earlier

review (Madden & Slavin, 1982) of segregated and integrated placement programs reported comparable social progress among integrated students, namely positive gains in their self-esteem, behavior, and emotional adjustment.[15] Moreover, integrated environments have fostered higher social development in all participating students.

The integration of students with disabling conditions cultivates social awareness and sensitivity in mainstream general education students while increasing the social competence of students from special education classes. Numerous studies (Donaldson, 1980; Fenrick & Peterson, 1986; Haring et al., 1987; Sasso et al., 1985; McHale & Simeonsson, 1980; Voeltz, 1980, 1982) reported that general education students included in integrated settings developed better attitudes towards students with disabilities.[16] One educator poignantly conveyed the importance of instilling in children an appreciation for diversity.

> "Only by bringing young people, disabled and nondisabled alike, together more frequently will we begin to rid ourselves of stereotypes. That is one of the principle benefits of integration, it holds potential for students to learn about each other's humanness, uniqueness, and similarities. By contrast, continued segregation of disabled and nondisabled students can only help foster stereotypes."[17]

In creating classroom settings which realistically reflect the world outside the school yard, integrated programs better prepare all students for life in a diversified society. Through

inclusion, then, schools can provide students with a truly well-rounded education.

Employment Gains

Upon entering the world beyond the school yard, students with disabling conditions benefit tremendously from the social competence acquired in integrated programs. A direct relation exists between employability of young adults with disabilities and their participation in vocational education offered in integrated programs. Documenting the employment rates of special education students after high school, researchers (Hasazi et al., 1985) in Vermont found a higher employment rate (61%) for students who had taken vocational education classes than for students who had no vocational education (45%).[18] Vocational training proved so beneficial because it provided the students with social as well as technical skills. As the authors noted, "[s]ince most vocational education programs in Vermont are offered in fully integrated settings, disabled students have the opportunity to learn side by side with nondisabled peers."[19]

Other studies (Brown et al., 1983; Wilcox & Bellamy, 1982; McDonnell & Hardman, 1989) have also demonstrated that integration enhances social skills development and preparation for community life among disabled students and, thus, improves their opportunities for obtaining gainful employment upon graduation.[20] Integration, therefore, enhances the quality of life for children with disabling conditions even during their later years.

Administrative Gains

Besides the many benefits already discussed, integration promises to effect other constructive changes in educational systems. If schools fully include students with disabling conditions in general education classrooms, they can better utilize resources and programs which they often duplicate in special education and general education classrooms. The merger of general and special education programs will likely result in the following major structural changes.

First, general and special education teachers can share their expertise, collaborate on strategy, and design comprehensive learning programs for students with disabilities. Second, special education teachers, paraprofessionals and therapists can spend less time determining classification and eligibility of students for special education programs and more time actually instructing them.[21] Third, in providing services directly in the general education classroom, special education teachers and paraprofessionals can simultaneously teach students with disabling conditions and students identified by general education teachers as children requiring individualized instruction. Finally, school administrators can distribute funds more efficiently. Specifically, they can consolidate programs and reduce the costs of transportation, remedial services, and instructional materials. One study (Affleck et al., 1988) reported that integrated classrooms offering special education services cost less to operate than resource rooms.[22]

Conclusion

Inclusion enhances the education of students with and without disabling conditions. It promises to streamline the educational system and better allocate its most important resource- teachers. Yet, schools have far to go before all students can enjoy the full benefits of inclusion. Current research clearly establishes that integrated models improve the academic and social performance of all students. It also shows that comprehensive inclusion presents the best alternative to segregated special education. One study (California Research Institute, 1992) pinpointed "the degree to which students [with severe disabilities] are integrated into school and family activities" as the single most important determinant of students' educational and social achievement.[23] The most current research as well as federal and State law thus compel administrators, educators, academics, and advocates to work towards fully including students with disabling conditions into general education.

The next chapter presents several models through which educators, parents, advocates, and community members can achieve inclusion.

NOTES

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3. Aforementioned surveys of the special education population in New York City public schools exposed an over-representation of African-American students. See infra p. 5 and note 8.

   A system-wide review in Ann Arbor, Michigan, reported a high number of African-American students in lowest track as well as special education classes. Maryann Marripodi Guzman, The New York City Fund for Public Education, Success for Each Child: A Research-Based Report on Eliminating Tracking in New York City Public Schools 33 (1992).

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5. William Stainback & Susan Stainback, A Rationale for the Merger of Special and Regular Education, 51 Exceptional Children 104 (1984).

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   Conrad Carlberg & Kenneth Kavale, The Efficacy of Special Versus Regular Class Placement for Exceptional Children: A Meta-Analysis, 14 Journal of Special Education 304 (1980) (The authors reported inconsistencies in the success of integrated placement. "Special classes were found to be significantly inferior to regular class placement for students with below average IQs, and significantly superior to regular classes for behaviorally disordered, emotionally disturbed, and learning-disabled children." Id. at 295.).

8. Gartner & Lipsky, supra note 6, at 375.

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9. Michael F. Giangreco & Joanne W. Putnam, Supporting the Education of Students with Severe Disabilities in Regular Education Environments, in Critical Issues in the Lives of People with Severe Disabilities 262 (L.H. Meyer et al. eds., 1991).

10. Gartner & Lipsky, supra note 6, at 375.

11. M.C. Wang & M.C. Reynolds, Avoiding the Catch 22 in Special Education Reform, 51 Exceptional Children 497-502 (1989).

    Cf. Nancy Madden & Robert Slavin, Mainstreaming Students with Mild Handicaps: Academic and Social Outcomes, 53 Review of Educational Research 519-69 (1983) (Study shows that specially-designed, integrated programs can academically and socially benefit most students.).

12. California Research Institute, Strategies, TASH Newsletter, May 1992, at 7.

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13. David A. Cole & Luanna H. Meyer, Social Integration and Severe Disabilities: A Longitudinal Analysis of Child Outcomes, 25 Journal of Special Education 348 (1991).

14. Id.

15. Gartner & Lipsky, supra note 6, at 375.

Nancy A. Madden & Robert L. Slavin, Count Me In: Academic Achievement and Social Outcomes of Mainstreaming Students with Mild Academic Handicaps 1 (1982).

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Chapter Three

CHAPTER THREE

MODELS OF INCLUSIVE EDUCATION

Inclusion goes far beyond the mere physical placement of special education students in general education classrooms. In fact, successful inclusion requires nothing less than rethinking methods of service delivery, reorganizing special education resources- including time and staff- and restructuring the curriculum, instructional methods, and assessment procedures of general education to accommodate students with diverse educational needs. To achieve full inclusion, therefore, schools must develop innovative special education programs which provide services in the general education classroom and create a flexible core educational curriculum responsive to individual students' needs and diversities.

In designing new programs, administrators and teachers must recognize that federal and State laws require only that schools provide an appropriate education for students with disabling conditions. Nowhere do the laws mandate a separate special education system.[1] The following strategies present administrators, teachers, and parents with practical models for combining special and general education. They demonstrate that:

> "special education as a whole can be reconceptualized ... not as a separate system but as an administrative tool to provide professional development and support for the instructional processes within each classroom."[2]

1. Adaptive Learning Environments Model (ALEM)

Developed by Margaret Wang of Temple University, the ALEM provides an alternative to pull-out resource rooms. The model

utilizes team teaching and special supports in the general education classroom and requires adaptation of the curriculum and pacing to each student's individual needs. In an adaptive classroom, a general education teacher conducts class while two special education teachers circulate to provide assistance to the teacher or direct services to students. To accommodate students' differences, the ALEM relies on a variety of instructional practices and attempts to develop learning experiences which match the learning needs of individual students. The curriculum in the classroom combines prescriptive or teacher-directed instruction-- effective in ensuring mastery of basic academic skills-- with aspects of open education which generate positive attitudes and processes of inquiry, self-management, responsibility for learning, and social cooperation.[3]

Furthermore, research indicates that disabled students fully integrated in the ALEM setting demonstrate more on-task behavior and greater capacity for independent work than resource room students. Students in ALEM classrooms also interact for instructional purposes with both teachers and peers more frequently. After six months, students participating in ALEM settings achieved test score gains equal to those of resource room students in math, and greater than those of resource room students in reading. Nondisabled students in ALEM settings also achieved academic gains. Moreover, the students with special needs in ALEM classrooms rated themselves higher than did their peers in resource-room programs in terms of self-esteem,

cognitive competence, and social interaction.[4]

One study (Wang et al, 1984) also suggested that the ALEM offers schools considerable flexibility. In the study, five different schools successfully implemented the ALEM despite their dissimilar demographics.[5]

2. **Integrated Classroom Model (ICM)**

The University of Washington created the ICM to educate students with mild disabilities. The model offers push-in services in integrated classrooms rather than pull-out services in resource rooms.[6] One of most significant advantages of the ICM is its cost-effectiveness. In elementary schools, the ICM can yield a cost-savings of approximately $50,000 a year.[7]

Evaluations of the ICM indicate that students with learning disabilities receive services in the classroom as effective as those offered in resource rooms. While only a few significant differences in achievement between students in the ICM and those in resource rooms appeared, these differences demonstrated the superiority of the ICM over resource rooms. Nondisabled students in the ICM performed as well as their peers in non-integrated classrooms.[8]

3. **Consultant Teaching (CT)**

In this model, professionals provide services to pupils with disabling conditions who attend full-time general education programs and to their general education teachers.

Although New York has yet to implement the CT model statewide, the Commissioner of Education has promulgated

regulations governing the distribution of services under this model. State regulations describe "direct consultant teacher services" as "specially designed, individualized or group instruction provided by a certified special education teacher to a pupil with a handicapping condition to aid such a pupil to benefit from the pupil's general education program." "Indirect consultant teacher services," on the other hand, consist of "consultation provided by certified special education teachers to assist [general education teachers] ... in adjusting to the learning environment and/or modifying their instructional methods to meet the individual needs of a pupil with a handicapping condition who attends their classes." (N.Y. Comp. Codes R. & Regs. tit. 8, Sec. 200.1 (pp)(1),(2)).[9]

While Idaho, Massachusetts, and Vermont have established the CT model statewide,[10] only three school districts in New York have experimented with the model. A review of the CT models used in New York City's Public Schools 193, 194, 217, 222, and 227, in Wayne Finger Lakes' BOCES, and in Buffalo's Riverside High School reported no significant differences on standardized tests between disabled students who received CT services and those who received resource room services. Yet, the review also revealed that teachers rated students who received CT services higher on academic and cognitive performance than students who had resource-room services.[11] Moreover, the reviewers found overwhelming teacher support for the program:

> "Without exception the teachers agreed that providing special education in general education classes is a

good idea for both special education pupils and general education pupils, depending upon the ... [particular pupil's special education needs]."[12]

4. **Team Teaching**

Similar to the consultant teacher model, team teaching requires general and special education teachers to share curriculum and instructional responsibilities in classrooms containing students with and without disabilities. While the model usually pairs a special education teacher and a general education teacher together in a classroom, the model can assign up to seven different instructors to a classroom, including speech therapists, guidance counselors, and health professionals.[13] Team teaching encourages teachers to draw upon one another's expertise. General educators, for instance, have the skills to teach large groups of students and develop lesson plans. Special educators, on the other hand, can identify problems in the curriculum and devise effective teaching strategies to combat such difficulties. Together, the teachers can provide all students with a curriculum responsive to their individual needs.[14]

5. **Cooperative Learning**

Cooperative learning describes various instructional strategies designed to accommodate a range of educational needs and to encourage social relationships among students of diverse abilities. These strategies supplement or replace students' independent seat work with small group activities. Individual success, therefore, depends upon group learning and collaboration

between students with and without disabilities.

One common strategy of cooperative learning is the "Team Games Tournament" in which a heterogenous group of four or five students work together to prepare for a weekly tournament. In another exercise, "Learning Together," students work in a similar arrangement to create a group project.[15]

Cognitive and affective benefits of cooperative learning are numerous. Specific student gains include: higher achievement for all students, especially the lowest-achieving; greater use of higher-order reasoning skills; more on-task behavior; better motivation to complete tasks; greater peer interaction; development of collaboration skills; better attitudes toward school, peers, and teachers; increased personal and academic self-esteem; more positive relationships among students of various races and ethnicities, and between students with disabling conditions and their nondisabled peers; and less stereotyping and more complex perceptions of members of other racial and cultural groups.[16]

6. **Peer Tutoring**

Peer tutoring offers schools a practical, cost-effective means of providing intensive one-on-one teaching, immediate feedback, and additional instructional time to students. In a traditional tutorial arrangement, nondisabled students can tutor students with disabilities. With proper supervision, disabled students can also serve as tutors for younger students as well as their disabled and nondisabled peers. Several schools have

programs in which students with disabling conditions tutor nondisabled students in sign language.[17]

A comprehensive review (Osguthorpe & Scruggs, 1986) of peer tutoring programs revealed that students with disabilities who served as tutors or acted as tutees acquired social and academic benefits. The tutors-- disabled and nondisabled students alike-- acquired greater self-esteem.[18] In addition to improved self-perception, tutors also gain mastery of instructional material.[19]

Peer tutoring, along with other school and community peer-support programs, can encourage the inclusion, rather than the isolation, of disabled students entering the general education classroom for the first time.[20]

7. **Parent Involvement**

While the Parent-Teacher Association (PTA) and the Individualized Education Program (IEP) process represent the traditional models of parent involvement, schools can nevertheless adopt new approaches to encourage parent involvement. Specifically, schools can conduct meetings in the evenings when working parents can attend; supply child-care services during meetings; send parents bulletins on school activities; and lend books and educational materials to parents. Through more comprehensive models, schools can actively promote parent and community involvement in the education of children.[21]

Parents, especially those of students with disabilities, have much to contribute to schools. From parents of disabled students, schools can obtain valuable insight, as

well as specialized materials, such as videos and books, and important contacts from other schools or agencies implementing inclusive programs.[22]

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Chapter Four

CHAPTER FOUR

RECOMMENDATIONS

In previous chapters, AFC has discussed the extent of segregated special education placement in New York State and New York City, administrative obstacles to realizing the LRE requirement, benefits of inclusion, and inclusive models. This chapter presents recommendations aimed at achieving the following goals:

(1) to maximize the inclusion of all children with disabling conditions in general education classrooms by providing most special education services directly to these children in general education classrooms;

(2) to eliminate the over-representation of children of color in special education systems, particularly in the more restrictive special education placements;

(3) to ensure that all procedures for evaluating and assessing children for special education services render culturally and racially non-discriminatory results; and

(4) to encourage local school administrators to provide leadership in and assume responsibility for implementing inclusive programs within their districts.

Recognizing the complexity of the tasks outlined below, we have divided our recommendations into three, time-ordered categories:

(1) immediate recommendations for action within the next six months;

(2) short-term recommendations for action within the next three years; and

(3) long-term recommendations for action within the next three to five years.

IMMEDIATE RECOMMENDATIONS

1. **NYSED should promulgate and widely circulate a policy statement which underscores its commitment to ensuring the availability of an inclusive education option for children with disabilities.**

The statement should parallel the "Inclusive Education Position Statement" adopted by the State of Michigan. Michigan's statement clearly defines inclusive education and directs the State Department of Education to:

> "develop specific recommendations for needed changes in policy, funding, and legislation to insure the availability of an inclusive education option for students with disabilities in Michigan."[1]

In the statement, NYSED also should fully inform school districts of their legal duty under federal and State law to include disabled children in general education to the maximum extent appropriate.

2. **NYSED should compile, assess, and document available data on current inclusive models and distribute the data to all local educational agencies.**

Relying on waivers assuring them of state reimbursement, numerous districts have already designed and instituted innovative, inclusive programs. NYSED need not conduct extensive research to obtain this data as it has already collected much of the information from schools with funding waivers.

3. **NYSED should convene a task force of educators, advocates, and other professionals to study the inclusive programs of other states and to recommend those programs particularly suited for implementation in New York.**

The task force should examine the inclusive programs of those states which integrate most or all of their disabled students into general education classrooms. Specifically, the task force should review the successful programs established in Vermont.

4. **NYSED should provide school districts with informational conferences, forums, videos, and distributions regarding inclusion.**

NYSED should offer districts information about the successful inclusive programs currently operating in the State. NYSED should also promote and teach districts about the purpose and philosophy underlying inclusion. In this endeavor, NYSED should contract with nonprofit agencies to conduct conferences and forums on inclusion. NYSED should strive to emulate the extensive program developed and operated by the New York Partnership for Statewide Systems Change. Finally, NYSED should encourage academia to make its best research accessible to local administrators and teachers.

5. **NYSED should provide technical assistance to school districts across the state. This technical assistance should enable school districts to:**

-fully comprehend the federal and State requirements pertaining to the LRE and assessment and evaluation procedures;

-fully comprehend the current special education reimbursement formula and the waiver policy to circumvent the stringent requirements of the reimbursement formula, especially

the waiver for the Consultant-Teacher model;

-implement the innovative, inclusive programs which other districts in the State have successfully adopted; and

-implement the inclusive models discussed in Chapter Three.

6. **NYSED should ensure, as required by federal law, that school districts comply with federal standards pertaining to the evaluation and assessment of children for special education.**

NYSED should guarantee that school districts abide by 34 C.F.R. Sec. 300.532 and N.Y. Comp. Codes R. & Regs. tit. 8, Sec. 200.4 (1982). In particular, NYSED should make certain that districts administer only those tests specifically normed and translated for children of certain cultural and racial backgrounds.

7. **NYSED, in conjunction with local school districts, colleges, and universities, should ensure that general education teachers receive more comprehensive training in the education of children with disabling conditions.**

Colleges and universities should instruct all students in the techniques of teaching a diverse group of students within the classroom. Local school districts should provide current teachers with supplemental training in this area. Teachers should learn techniques, such as those discussed in Chapter Three, for teaching disabled and nondisabled students in the general education classroom.

8. **The Chancellor of New York City Public Schools should update Special Circular No. 1 (Update 1989-1990), specifically formulating a policy statement that promotes full inclusion of disabled children in general education classrooms and revising current regulations which impede the implementation of inclusive programs.**

The Chancellor should revise the regulations discussed in

Chapter One, namely, Regs. 3.2.3, 3.2.4, 5.1, 5.2, and 5.3. The regulations should not include pre-determined ratios of teachers to disabled students, any express or implied power of teachers to block the inclusion of disabled students, or requirements that disabled students' achievement levels correspond to those of their general education classmates. Instead, the regulations should mandate flexible consultation periods for special and general education teachers and age-appropriate placement for disabled students.

9. **New York City Public Schools should adopt and implement the pilot program, developed by the New York City Office of Special Education Services and approved by NYSED, to employ the Consultant Teacher Program in serving special education and Chapter 1 students in general education classrooms.**

10. **School districts should devise local initiatives to achieve the following objectives:**

-create support and informational networks for teachers to share strategies for and experiences in educating disabled children within the general education classroom;

-develop consultant-teacher and team-teaching strategies and adopt inclusive models, such as those described in Chapter Three;

-develop "natural supports," i.e., students and adults, who can provide disabled children with informal assistance or simple special education services in the general education classroom;

-strive towards school-based management and create other programs through which parents can take an active role in the education of their children and through which community members can contribute their time and resources;

-convene committees of community leaders, professionals,

parents, and teachers to establish high standards for curriculum to interest and challenge students and to establish high standards of student performance; and

-design and implement programs which frequently assess students' progress and provide remediation as necessary, such as the New York City program-- Promoting Success-- which entitles third graders to summer school and remedial services in the fourth grade.

Advocates accompanying students and their parents to IEP meetings and impartial hearings have frequently observed two fundamental barriers to appropriate special education evaluation and placement in New York City public schools. First, the anecdotal experience of our advocates shows that school principals and teachers unduly influence the School-Based Support Teams (SBSTs) which evaluate and assess children referred for special education. Since each SBST's psychologist, social worker, and licensed evaluator have close working relationships with teachers and principals, they heavily weigh the comments and informal assessments of these school officials in their evaluations. Thus, too many children do not receive fair, impartial evaluations.

Second, our advocates have observed that Committees on Special Education (CSEs) and students' schools often fail to take responsibility for developing and implementing comprehensive, yet flexible Individualized Education Program (IEP) goals. In establishing students' IEP goals, CSEs fail to fully consider, if

at all, SBSTs' assessments of students. Frequently, CSEs set forth illegible, vague, and narrowly-focused goals, rarely including decertification or inclusion. Furthermore, when parents request changes or improvements in their child's special education placement, the CSE which designed the child's IEP often claims that it lacks the authority to change the IEP without the approval of the child's school. When parents approach the school, the school refers them back to the CSE. The frequent refusal of CSEs and schools to accept accountability for students' IEPs thus deprives children of appropriate special education placement.

To contest poorly written IEP's or inappropriate placements, our advocates have consistently advised parents to seek independent evaluations and request impartial hearings based on the results of those evaluations. For parents with limited financial resources, this is not always a viable option. Consequently, based on AFC's practical experience, we propose the following immediate recommendation:

11. **NYSED should issue regulations which require SBSTs to follow stricter criteria in making referrals, to better document evaluation and assessment results, and to fully disclose school officials' informal assessments of students.**

NYSED should develop and distribute revised criteria for special education evaluation and assessment. NYSED should ensure that evaluators use procedures and tests which fully assess students, specifically identifying their academic weaknesses as well as their strengths. In evaluation reports, NYSED should also require SBSTs to demonstrate point by point that evaluation

and assessment results correspond to their special education placement recommendations. NYSED should periodically and randomly inspect these forms to ensure that SBSTs objectively evaluate students. Finally, NYSED should also provide technical assistance to SBSTs and schools to restructure their referral procedures and utilizing the new forms.

12. **NYSED should promulgate regulations which establish high standards for IEPs and set forth procedures for review of substandard IEPs.**

NYSED should generate regulations which require CSEs to develop detailed, holistic, innovative educational programs for special education students, to specifically address the results of students' evaluations and assessments, and to establish goals of decertification and inclusion. NYSED should also issue regulations to provide parents with a mechanism to challenge substandard IEPs at the school or district level prior to requesting an impartial hearing.

SHORT-TERM RECOMMENDATIONS

1. **The New York State legislature, in conjunction with NYSED, should revise the special education reimbursement formula, broaden the continuum of special education services offered in the general education classroom, and expand the program options between levels of service.**

The legislature should adopt a "program neutral" funding formula which reimburses schools for the amount of time each student receives any type of special education service, not for the setting in which each student receives services. The legislature should rely upon current, accurate, and complete cost

figures for providing special education services. In the revised formula, the legislature should include tuition subsidies to offset the high cost of some special education placements.

The legislature should also offer financial and other incentives to encourage schools to implement consultant teachers programs and other methods which deliver special education services directly in general education classrooms. The legislature should simultaneously expand the entire special education service continuum and reimburse schools at the same rate for all options, providing subsidies for the most intensive, residential placements. In particular, the legislature should expand the consultant teacher option to include a broader range of services.[2]

2. **The legislature should establish a new continuum of intermediate, preventive services which provides students with individualized support services prior to special education referral.**

The legislature should require schools to provide short-term remediation services before referring students to special education services. Before referring a student for special education evaluation and assessment, designated school staff members should conduct: informal reviews of the student's classwork; interviews with the student, his or her peers, and his or her parents; and structured observations of the students in the classroom.

After the informal review, the reviewers and the student's teachers should devise and articulate creative strategies for classroom instruction. The strategies should include objective,

substantive goals which the student should strive to achieve in one to two months. Safeguards must be designed and implemented to ensure that this "pre-referral process" does not undermine a parent's right to refer their child for an evaluation at any time.

3. **NYSED should collect recommendations for a revised special education funding formula from school districts, especially those currently implementing inclusive programs through waivers.**

To assist the State legislature in modifying the existing formula, NYSED should compile recommendations from districts which have experimented with and devised funding schemes for inclusive programs.

4. **NYSED should thoroughly investigate New York State's failure to integrate special education students into general education.**

Specifically, NYSED should examine the factors underlying the great disparity among the states in integrated educational programs. NYSED should also identify and document the programs and strategies instituted by states which have successfully integrated the majority of their special education students.

5. **NYSED should thoroughly investigate New York State's over-representation of children of color in special education placements, especially their over-representation in the more restrictive settings.**

NYSED should compare the representation of children of color in other states' special education placements with New York's figures. NYSED should also compare other states' procedures for referral, evaluation, and assessment with New York's procedures.

While federal and State law compels school districts to

evaluate and assess students for special education with non-discriminatory tests and procedures, the anecdotal experience of our advocates indicates that New York City public schools fail to do so. We have observed that public schools in the City use standardized assessment instruments calibrated for English-speaking, middle-class students. Few, if any, instruments are normed for cultural diversity. Virtually no instruments are normed for Chinese, Haitian, and Korean students. Furthermore, our experience shows that White, middle-class, English-speaking individuals usually administer the evaluation tests and teach special education classes. In 1989, for example, 68% of all special education teachers in New York City were White.[3] The unfamiliarity of teachers and clinicians with the cultural behaviors and norms of immigrant children and children from varied ethnic, racial, cultural and linguistic backgrounds can affect inapporpriately evaluation and assessment results.[4]

Finally, the New York City Public Schools reported that African-American students represented a disproportionately large number of initial referrals to special education during the school year 1989-1990. In seventeen districts, the percentage of African-American students initially referred to special education exceeded the percentage of African-American students in the general education population by 5%.[5]

Thus, based on our field experience and aforementioned data evincing the over-representation of children of color in special education placements, we add the following recommendations.

6. **NYSED should scrutinize and monitor the appropriateness of instruments currently used to evaluate and assess children of color for special education.**

Specifically, NYSED should compare:

-the referral and placement rates of African-American and Latino children with those of White children;

-the types of disabilities identified in African-American and Latino children with those identified in White children;

-the rate at which CSEs/SBSTs recommend less restrictive settings for children of color in segregated special education placements with the rate at which CSEs/SBSTs recommend similar settings for White children in segregated special education placements; and

-the results of evaluations of Limited English Proficient (LEP) children administered by clinicians proficient in the children's dominant languages with the results of evaluations administered by monolingual clinicians and later translated.

7. **NYSED should convene a task force of racially and culturally diverse representatives from education agencies, nonprofit organizations, and professional associations to study and recommend revised evaluation and assessment procedures and materials for children of diverse cultural and racial backgrounds.**

NYSED should move quickly to establish the task force. In addition to the members' own experiences, the task force should draw upon other states' evaluation and assessment procedures. Once the task force completes its revision of procedures and materials, NYSED should distribute the revisions to all testing centers and publishers as well as all local education agencies. NYSED should set forth specific time-lines to ensure that schools

districts swiftly adopt completely re-normed procedures and materials.

8. **NYSED should actively recruit teachers who represent different racial, ethnic, cultural, and linguistic backgrounds.**

NYSED should work with secondary school guidance counselors and college counselors to encourage graduates to enter the teaching profession.

9. **School districts should strive to match children with evaluators who are familiar with their cultural, racial and linguistic backgrounds and who can sensitively interpret all assessments, especially un-normed tests.**

Until school districts obtain evaluation and assessment materials fully normed for children of diverse backgrounds, they should provide evaluators who can detect cultural or racial bias in the tests and adjust the materials or test results to account for such bias.

In visiting numerous schools in New York City, our advocates have also observed extremely over-crowded conditions. In many schools, teachers conduct four or five classes in school cafeterias or auditoriums. Recognizing that such over-crowding will jeopardize inclusive programs, we put forth the following recommendation.

10. **NYSED should encourage school districts to limit the number of students in classrooms and provide financial assistance to assist them in building more classrooms.**

To ensure the success of inclusive programs which remain vulnerable to extreme over-crowding in many schools, NYSED should financially assist schools in hiring more teachers and building new facilities or re-modeling existing facilities. NYSED should

also strongly discourage over-crowded schools from setting up temporary classrooms in cafeterias, auditoriums, and other non-conventional spaces. Instead, NYSED should offer special assistance to particularly over-crowded schools to enable those schools to construct additional classrooms.

LONG-TERM RECOMMENDATIONS

1. **NYSED should provide technical assistance to enable school districts to fully comprehend the revised special education funding formula once enacted by the State legislature.**

2. **NYSED, in conjunction with local school districts, colleges, and universities, should foster culturally-sensitive, inclusionary attitudes in administrators and teachers.**

Under the directives of NYSED, colleges and universities should train new teachers in culturally-sensitive and inclusionary evaluation and teaching techniques. Local school districts should provide similar on-going training for current teachers. NYSED should strive for the trickle-down effect: it should conduct conferences and information sessions for administrators and principals to convince them of the need for change. Once on board, these officials should then implement changes on the local level.

CONCLUSION

Advocates for Children strongly recommends a radical change in the current special education system. We must all work together to broaden the definition of children capable of being educated in general education classrooms and eliminate the segregation of disabled children in separate special education programs. To ensure that schools meet the needs of all children in the inclusive classroom, we must also endeavor to improve the quality of classroom teaching, increase the availability and quality of related services and instructional materials, and expand the continuum of special education services.

Advocates for Children looks forward to working with the New York State Department of Education, the New York City Board of Education, school administrators, teachers, parents and other advocates to implement the recommendations contained within this report. We are confident that our combined efforts will result in significant and widespread gains for New York school children.

NOTES

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2. New York Bar Association, Legislative Incentives for Segregated Special Education Programs. (forthcoming Oct. 1992) (manuscript at 41-42, on file with Advocates for Children, Inc.).

3. Walter Stafford et al., Federation of Protestant Welfare Agencies, Inc., Cause for Alarm: The Condition of Black and Latino Males in New York City 14-15 (1991).

4. Elba Maldonado-Colon, coordinator of the Hispanic bilingual special-education program at San Jose State, reviewed a check-list of 100 behaviors by which students are often identified as learning disabled or emotionally disturbed. More than half of these characteristics, such as short attention span, disorganization, confusion, anxiousness, shyness, uncooperativeness, defiance, inconsistent academic performance, and poor recall are typical of children learning a second language or undergoing cultural transition.

   Peter Schmidt, Schools Report Progress in Assessing LEP Students, Education Week (April 18, 1990).

5. Division of Special Education, New York City Public Schools, Special Education Students in New York City Public Schools: A Racial/Ethnic Distribution 2 (1990).

Appendices

APPENDIX A

THE LAW

LEAST RESTRICTIVE ENVIRONMENT REQUIREMENT

Federal Law

Prior to the enactment of federal legislation in 1975 which compelled states to provide appropriate education for disabled children, federal courts extended the principle of equal educational opportunity to students who needed special education services. Pennsylvania Association for Retarded Children v. Commonwealth of Pennsylvania, 334 F.Supp. 1257 (E.D.Pa.1971); Mills v. D.C. Board of Education, 348 F.Supp. 866 (D.D.C.1972). The two decisions strongly supported the individual student's right education in the least restrictive environment (LRE) appropriate to his or her educational needs.

In 1975, Congress enacted P.L. 94-142, the Education for All Handicapped Children Act, specifically to redress the lack of educational opportunities for children with disabilities in public schools. Re-authorized in 1990 as the Individuals with Disabilities Education Act (IDEA), P.L. 94-142 endeavors

> "to assure that all children with disabilities have available to them ... a free appropriate public education which emphasizes special education and related services designed to meet their unique needs, to assure that the rights of children with disabilities and their parents or guardians are protected, to assist States and localities to provide for the education of all children with disabilities, and to assess and assure the effectiveness of efforts to educate children with disabilities." 20 U.S.C. Sec. 1400(c).

Within IDEA, Congress set forth specific guidelines for school

districts in their identification and evaluation of children with disabilities, in their design and implementation of an appropriate educational program for each child, i.e., an Individualized Educational Program (IEP), and in their provision of procedural mechanisms through which parents or guardians can object to the type of education afforded their children.[1]

Under IDEA, a "free appropriate public education" includes education in the LRE. The statute clearly delineates the LRE requirement to which both local educational agencies and state educational agencies must adhere. In their applications to state agencies for federal funds, local educational agencies must:

> "establish a goal of providing full educational opportunities to all children with disabilities--including ... to the maximum extent practicable ... the provision of special services to enable such children to participate in regular educational programs." 20 U.S.C. 1414(a)(1)(C)(iv).

State educational agencies must meet a more onerous burden. To qualify for federal funds, states must establish:

> "procedures to assure that, to the maximum extent appropriate, children with disabilities ... are educated with children who are not disabled, and that special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily." 20 U.S.C. Sec. 1412(5)(B).

Implementing regulations also direct schools to provide the LRE for children with disabilities. School districts must place disabled children in their neighborhood schools as long as their IEPs include no specialized educational facilities (34 C.F.R.

Sec. 300.552(c)).[2] Prior to any placement in more restrictive settings, school districts must also accommodate disabled children in the general classroom (34 C.F.R. Sec. 104.34(a)). Finally, districts must ensure that each disabled child participates, to "the maximum extent appropriate to the needs" of the individual child, with nondisabled children during non-academic and extra-curricular services and activities, such as lunch, recess, art or music classes, or after-school clubs (34 C.F.R. Sec. 104.34(b); 34 C.F.R. Sec. 300.553).[3]

Regulatory agencies of the U.S. Department of Education, namely the Office of Special Education and Rehabilitative Services (OSERS) and the Office of Civil Rights (OCR), have issued numerous policy letters and findings affirming the LRE requirement. Recently, OSERS reiterated the federal mandate:

> "[t]o the maximum extent appropriate, children with disabilities must be educated with children who are not disabled. Placement in special classes, separate schooling, or other removal of children with disabilities from the regular education environment should occur only when the nature and severity of the disability is such that education in regular classes, with the use of supplementary aids and services, cannot be achieved satisfactorily." Vergason, 17 EHLR 471 (OSERS 1991).

Likewise, OCR has repeatedly found that categorical denial of general education placement for students with disabling conditions violates federal regulations requiring integration in academic and non-academic settings. In Berks County (PA) Intermediate Unit #14, 17 EHLR 5 (OCR 1990), for example, OCR ruled that an intermediate unit and its constituent school

districts failed to comply with 34 C.F.R. 104.34(a) and (b) when they placed mentally retarded students who exhibited certain characteristics in separate facilities without exploring "whether or not these students could be educated with nonhandicapped students in a less restrictive environment." Id. at 6.[4]

OSERS and OCR have carefully set forth the conditions under which schools can remove students from general education classrooms and place them in more restrictive settings. OSERS has repeatedly emphasized that school districts cannot remove students from general education classes unless they can demonstrate that the students cannot benefit from general education with the appropriate support services.[5] In interpreting 34 C.F.R. Sec. 104.34(a), OSERS and OCR have stressed that schools must determine placement for students with disabilities solely on the basis of each individual student's needs. Removal from general education, OSERS has declared,

> "must not be based upon the (1) category of handicapping condition, (2) configuration of the service delivery system, (3) availability of educational or related services, (4) availability of space, or (5) curriculum content or method of service delivery." Boschwitz, EHLR 213:215 (OSERS 1988).[6]

Distinguishing the individual needs of each student as the only legitimate factor in placement decisions, OCR has repeatedly asserted that schools cannot deprive disabled children of LRE placement for administrative convenience.[7]

Further supplementing the statute and regulations, federal case law holds that through IDEA "Congress [has] created a strong

preference in favor of mainstreaming." Daniel R. v. State Board of Education, 874 F.2d 1036, 1044 (5th Cir. 1989); Rapid City School District 51-4 v. Vahle, 733 F. Supp. 1364 (D.S.D. 1990), aff'd, 922 F.2d 476 (8th Cir. 1990). In Campbell v. Talladega County Board of Education, 3 EHLR 552:472 (N.D. Ala. 1981), the district court found that a local education agency failed to educate a disabled child to the maximum extent appropriate with his nondisabled peers where the child had "virtually no contact with nonhandicapped students outside of his lunch period." Id. at 477. Underlying the court's reasoning was its conclusion that "such interaction is essential to provide [the disabled child] with role models and to increase his ability to act independently." Id.[8]

The Court of Appeals for the Sixth Circuit bolstered the statutory preference for integrated special education placement with its holding in Roncker on behalf of Roncker v. Walter, 700 F.2d 1058 (6th Cir. 1983), cert. denied, 464 U.S. 864, 104 S.Ct. 196 (1983). To determine whether placement is statutorily appropriate, the court enunciated the following standard:

> "In a case where the segregated facility is considered superior, the court should determine whether the services which make the placement superior could feasibly be provided in a non-segregated setting. If they can, the placement in the segregated school would be inappropriate under the [Individuals With Disabilities Education] Act." Id. at 1063.

Numerous federal courts have adopted the Roncker standard in ascertaining whether school districts have integrated disabled children to the maximum extent appropriate.[9]

Federal courts have consistently held that integration is a presumptive requirement under IDEA. The Court of Appeals for the Fifth Circuit has stated that before schools place children with disabilities in restrictive settings, they must first take significant steps, not merely "token gestures," to accommodate the children in general education classrooms. Daniel R., 874 F.2d at 1048. No attempt to accommodate disabled children in general education prior to placement in more restrictive environments, the court concluded, constituted a "violation of the Act's express mandate to supplement and modify regular education." Id. Thus, federal courts have required schools to educate children with disabilities, who can participate in general education classes with necessary supplementary aids and services, in such classes, rather than in more restrictive settings.[10]

Finally, federal courts have imposed a tough burden upon school districts to demonstrate the necessity of restrictive placements. In particular, the courts have placed the burden upon schools to demonstrate that their placement proposals provide integration with nondisabled children to the maximum extent appropriate. Davis v. District of Columbia Board of Education, 530 F.Supp. 1209, 1212 (D.D.C. 1982).[11] A California federal district court recently ordered a school district to place a moderately mentally retarded child in a regular second grade classroom and provide her with supplemental services upon finding that the school district's recommendation of half-day

placement in a regular classroom failed to constitute appropriate placement for the child. Board of Education, Sacramento City Unified School District v. Holland, 786 F. Supp. 874, 880 (E.D. Cal. 1992).

State Law

In addition to the federal statute, regulations, and case law, statutory and regulatory law in New York State also manifests the LRE requirement. Mirroring IDEA, New York State Education Law specifies that each school district must provide:

> "to the maximum extent appropriate [special education] services in a manner which enables children with handicapping conditions to participate in regular education services when appropriate." N.Y. Educ. Law tit. 6 Sec. 4402(2)(a) (Consol. Supp. 1991).

Furthermore, like its federal counterpart, New York statutory law requires school districts to place students with disabilities in general education classrooms before assigning them to special education classes.

> "Special education services and programs shall be provided after the appropriateness of the resources of the regular education program, including educationally related support service, speech and language improvement services and remedial instruction, have been considered." N.Y. Educ. Law tit. 6 Sec. 4401-a(5) (Consol. Supp. 1991).

Thus, school districts in New York State which fail to educate disabled students in the LRE violate both federal and State statutes.

Like federal regulations pertaining to IDEA, New York State regulations clearly support the LRE requirement. The regulations

specifically define the LRE as placement for a student with a disabling condition which:

> "(1)provides the special education needed by the pupil; (2) provides for the education of the pupil to the maximum extent appropriate with other pupils who do not have handicapping conditions; and (3) is determined following consideration of the proximity of the placement to the pupil's place of residence" N.Y. Comp. Codes R. & Regs. tit. 8, Sec. 200.1(v)(1)-(3) (1982).

State regulations, therefore, demand that school districts include students with disabilities in general education classrooms at their neighborhood schools to the maximum extent appropriate.

Through numerous decisions striking restrictive placement recommendations, the State Review Officer and the Commissioner of Education have upheld the LRE requirement. These officials have repeatedly ruled that local district Committees on Special Education (CSEs)-- formerly Committees on the Handicapped (COHs)-- failed to meet their burden of demonstrating that their recommendations for special education placement constituted the LRE.[12] The decisions of the State Review Officer and the Commissioner of Education stress the legal duty of schools to include students with disabilities in the general education classroom to the maximum extent appropriate. A recent ruling stated that:

> "where the provision of additional support services or supplementary aides can address the student's ... needs, the CSE is obligated to provide those services to enable the pupil to remain in the public school setting.... [T]o the extent that the student can benefit from placement in an integrated setting, the

> law requires that he be afforded those opportunities." Application of a Child with a Handicapping Condition, 29 Educ. Dep't Rep. 339, 342 (New York City School District, Mar. 23, 1990).

The State Review Officer and the Commissioner of Education also require CSEs to show that, prior to recommending restrictive placement, the school districts offered support services to disabled students in general education classrooms. Thus, CSEs must qualify special education placement recommendations with evidence that general education with supplementary services constituted inappropriate education for disabled students. Application of a Handicapped Child, 24 Educ. Dep't Rep. 18 (Greenwich Central School District, July 20, 1984).[13] Consequently, CSEs can recommend residential placement, the most restrictive setting, only if they establish that it is absolutely essential to the provision of an appropriate education.[14] Finally, the State Review Officer and the Commissioner of Education have consistently ruled that CSEs have the burden of demonstrating the appropriateness of their placement recommendations. Application of a Child with a Handicapping Condition, 29 Educ. Dep't Rep. 153 (Red Hook Central School District, Nov. 14, 1989); Application of a Child with a Handicapping Condition, 29 Educ. Dep't Rep. 83 (New York City School District, Sept. 26, 1989).

EVALUATION & ASSESSMENT REQUIR 4ENTS

Federal Law

Upon finding that children of color, especially African-

American children, represented a disproportionate number of the students identified and placed in special education programs, Congress set forth certain standards for the evaluation and assessment of students with disabilities in IDEA.[15] Therefore, to receive federal funding, state educational agencies must establish:

> "procedures to assure that testing and evaluation materials and procedures utilized for the purposes of evaluation and placement of children with disabilities will be selected and administered so as not to be racially or culturally discriminatory. Such materials or procedures shall be provided and administered in the child's native language or mode of communication, unless it clearly is not feasible to do so, and no single procedure shall be the sole criterion for determining an appropriate educational program for a child." 20 U.S.C. 1412(5)(C).

Expanding the statutory mandate of IDEA, federal regulations specify criteria for testing and evaluation procedures. The districts' evaluation teams must include different professionals and at least one individual with knowledge of the disability in question (34 C.F.R. Sec. 300.532(e)). Districts must utilize more than one test or procedure to determine an individual child's special education placement and to design an appropriate educational program, including teacher recommendations and the child's social or cultural background (34 C.F.R. Sec. 300.532(d); 34 C.F.R. Sec. 104.35(c)(1)).[16] Tests and procedures must assess an individual child in:

> "all areas related to the suspected disability, including where appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities." (emphasis added) 34

C.F.R. 300.532(f).

School districts must also make certain that only trained personnel administer tests and other evaluation materials designed and proven valid for specific educational needs assessment rather than general intelligence measurements (34 C.F.R. Sec. 300.532(a) and (b)).[17] Finally, districts must ensure that in assessing students with impaired sensory, motor, or verbal skills, evaluators select and administer tests that identify students' aptitudes or achievement levels rather than their impairments (34 C.F.R. Sec. 300.532(c); 34 C.F.R. Sec. 104.35(b).)[18]

State Law

Although no New York State statutes establish evaluation and assessment requirements, State regulations governing procedures for evaluation and referral mirror federal regulatory criteria which prohibit racial or cultural bias in the evaluation process (N.Y. Comp. Codes R. & Regs. tit. 8, Sec. 200.4 (1982)).[19] The Commissioner of Education has fervently cited CSEs for failure to gather and consider all material relevant to a child's special education evaluation and assessment. For example, in Application of a Child with a Handicapping Condition Dec. No. 12519 (New York City School District, May 31, 1991), the Commissioner ruled that the local CSE had inadequately evaluated a pupil whom it had recommended be classified as emotionally disabled and placed in a special class. Specifically, the Commissioner found the CSE's record:

> "devoid of any findings concerning the effects of environmental, cultural or economic disadvantage, even though the current social history indicates that those factors may have affected the pupil's academic performance." Id. at 4.

Numerous decisions indicate the widespread failure of CSEs' to consider the cultural and socio-economic background of students before assigning them to special education programs.[20]

RESEARCH AND PROGRAM IMPROVEMENT REQUIREMENTS

Federal Law

In drafting IDEA, Congress recognized the need to continually modify and refine special education practices in light of developing expertise and current research. The statute requires the U.S. Secretary of Education to assist financially various educational agencies and nonprofit organizations in initiating studies and analyses on the administration, management, delivery, and effectiveness of existing programs (20 U.S.C. Sec. 1418(c)(1)). The congressional research proposals clearly exhibit the goal of promoting inclusion of students with disabilities in general education classrooms. Specifically, the Secretary of Education must commission studies and investigations aimed at:

> "developing the capacity to implement practices having the potential to integrate children with disabilities, to the maximum extent appropriate, with children who are not disabled;" 20 U.S.C. Sec. 1418(c)(1)(D); and

> "strengthening programs and services to improve the progress of children and youth with disabilities while in special education and to effect a successful transition when such children and youth leave special education." 20 U.S.C. 1418(c)(1)(F).

Furthermore, the Secretary can also work with other public agencies and nonprofit organizations to develop:

> "statewide projects ... to improve the quality of special education and related services for children and youth with severe disabilities, and to change the delivery of those services from segregated to integrated environments." 20 U.S.C. 1424(a)(5).

IDEA thus provides the U.S. Department of Education, NYSED, New York City Public Schools, and numerous nonprofit agencies with the opportunity to jointly research, analyze, and correct flaws in existing special education programs.

NOTES

1. Eileen L. Ordover & Kathleen B. Boundy, Center for Law and Education, Educational Rights of Children with Disabilities: A Primer for Advocates 1 (1991).

2. Id. at 15.

3. Id.

   See also Liscio and Hippensteel v. Woodland Hills School District, 734 F. Supp. 689, 16 EHLR 861 (W.D.Pa.1989) (holding that, even for students requiring special education classrooms, integrated educational experiences form an essential component of an appropriate program. Therefore, such students should be integrated into nonacademic classes at a regular elementary school to the maximum extent possible.).

4. See, for example, Colon (MI) Community School District 18 IDELR 31 (OCR 1991) (District failed to demonstrate that disabled students placed at a segregated facility were receiving opportunities for either education in general educational environments to the maximum extent appropriate or mainstreamed non-academic and extra-curricular activities.); Allegheny (PA) Intermediate Unit #3, 17 EHLR 1017 (OCR 1991) (Intermediate unit violated 34 C.F.R. Sec. 104.34(a)-(b) by categorically assigning student with certain disabilities to isolated special education centers without determining if their educational needs could be met in LREs.); Lakeview (MI) Community Schools, 17 EHLR 1045 (OCR 1991); West Central (IN) Community Schools, 17 EHLR 538 (OCR 1990) (Special education cooperative and its constituent districts violated federal regulations by placing students with moderate mental disabilities at a segregated facility regardless of whether they could be educated in a regular setting, and by categorically denying general education placement to students with severe mental disabilities.); Peru (NY) Central School District, 16 EHLR 514 (OCR 1989) (Blanket rejection of an integrated setting for mentally retarded and emotionally disturbed students and categorical placement at a multidistrict cooperative center as a matter of convenience violated federal regulations.); Wyoming (MI) Public School District, EHLR 311:125 (OCR 1988) (District violated federal regulations by rejecting regular school placement for disabled students placed at an occupational high school without sufficient demonstration that they could not be educated in a regular school setting.); Newark (NJ) School District, EHLR 311:118 (OCR 1987) (Use of repetitious or pre-printed language on IEPs, inability to distinguish between IEPs of students in regular

school placements and those of students in separate facilities, and absence of written documentation of children's ability to participate in general education program indicated inadequacy of IEP documentation and failure to provide students at facilities for disabled students with LRE appropriate to their needs.); Hawaii State Department of Education, EHLR 311:52 (OCR 1985) (Hawaii public schools' general practice of grouping all special education students together on a campus caused the segregation of disabled students from their nondisabled peers and violated 34 C.F.R. Sec. 104.34.).

5. See, for example, Rowland, 16 EHLR 501 (OSERS 1990). Seealso Caddo Parish (LA) Public Schools, 17 EHLR 232 (OCR 1990); Atherton (MI) Community School District, 16 EHLR 811 (OCR 1990); Danville (IL) School District #118, 16 EHLR 239 (OCR 1989); Cleveland (OH) Public School District, EHLR 353:307 (OCR 1988); Manitowoc County (WI) Handicapped Children's Education Board, EHLR 312:114 (OCR 1988); Ashwaubenon (WI) School District, EHLR 311:120 (OCR 1988); Richland (SC) School District #1, EHLR 312:111 (OCR 1988); Wyoming (MI) Public School District, EHLR 311:125 (OCR 1988); Texas Education Agency, EHLR 352:459 (OCR 1987); Normal (IL) Community Unified School District #5, EHLR 352:434 (OCR 1987); Newark (NJ) School District, EHLR 311:118 (OCR 1987); Hawaii State Department of Education, EHLR 311:52 (OCR 1985); Hendry County (FL) School District, EHLR 257:71 (OCR 1979) (OCR findings of school districts' violation of this requirement).

6. See also Johnson, EHLR 213:182 (OSERS 1988) (stating that "[no] child should be denied an opportunity for interaction with nonhandicapped children because of a lack of placement options." Id.); Earnest, EHLR 211:417 (OSERS 1986) (declaring that federal law prohibits removal to a more restrictive setting for reasons of administrative convenience: "[o]nly the individual educational needs of the child can justify such a removal." Id.). See also Elizabeth (PA) Forward School District, 17 EHLR 1051 (OCR 1991).

7. See Pike County (AL) School District, 16 EHLR 807 (OCR 1990); Peru (NY) Central School District, 16 EHLR 514 (OCR 1989); Macon-Piatt (IL) Special Education District, 16 EHLR 22 (OCR 1989); Carbon-Lehigh Intermediate Unit #21, EHLR 257:551 (OCR 1985); Special School District of St. Louis (MO) County, EHLR 257:322 (OCR 1981); Petaluma (CA) Joint Union High School District, EHLR 257:263 (OCR 1981).

8. See also Earnest, EHLR 211:417 (OSERS 1986); South Central (IN) Area Special Education Cooperative, 17 EHLR 248 (OCR 1990); Tucson (AZ) Unified School District #1, 17 EHLR 11 (OCR 1990); Berks County (PA) Intermediate Unit #14, 17

EHLR 5 (OCR 1990); Stafford County (VA) Public Schools, 16 EHLR 896 (OCR 1990); Atherton (MI) Community School District, 16 EHLR 811 (OCR 1990); Cincinnati (OH) City School District, 16 EHLR 651 (OCR 1990); Manitowoc County (WI) Handicapped Children's Education Board, EHLR 312:114 (OCR 1988); Ashwaubenon (WI) School District, EHLR 311:120 (OCR 1988); Wyoming (MI) Public School District, EHLR 311:125 (OCR 1988); Granite (UT) School District, EHLR 311:106 (OCR 1987); Texas Education Agency, EHLR 352:459 (OCR 1987); Special School District of St. Louis County (MO), EHLR 352:156 (OCR 1986); Cooperative Association for Special Education (IL), EHLR 257:130 (OCR 1979); Nebraska State School for the Deaf, EHLR 311:13 (OCR 1979).

9. See, for example, Barnett v. Fairfax County School Bd., 927 F.2d 146, 153 (4th Cir. 1991); A.W. by and through N.W. v. Northwest R-1 School District, 813 F.2d 158, 163 (8th Cir. 1987), cert. denied, 484 U.S. 847, S.Ct. 144, 98 L.Ed.2d 100 (1987).

10. See Harmon v. Mead School District No. 354, No. CS-90-210-WFN (E.D.Wash. June 14, 1991) (holding that full-time segregated placement for a mentally retarded child failed to constitute education in the LRE); Greer v. Rome City School District, 762 F. Supp. 936, 17 EHLR 881 (N.D.Ga.1990) (holding that removal from a general education classroom and placement in segregated special class, although "appropriate" for child, did not meet LRE requirement because child remained capable of benefiting from regular class placement, with provision of supplemental support services); School District of Kettle Moraine v. Grover, 755 F.Supp. 243 (E.D.Wis.1990) (holding that student did not require placement in totally segregated facility because IEP could be implemented satisfactorily in an integrated program at student's neighborhood school); Briggs v. Board of Education of Connecticut, 707 F. Supp. 623, 1988-89 EHLR DEC. 441:418 (D.Conn.1988) (holding that federal law requires special services to be provided in an integrated program if possible rather than a segregated setting); Garrick v. Curwensville Area School District, 669 F. Supp. 705, 1987-88 EHLR DEC. 559:155 (M.D.Pa.1987) (holding that district would violate federal law by placing student in a more restrictive setting since the student was progressing under his IEP); Manuel R. v. Ambach, 635 F. Supp. 791, 1985-86 EHLR DEC. 557:331 (E.D.N.Y.1986) (holding that student could be provided an appropriate education in the general education classroom with resource room assistance and speech and language therapy); Bonadonna v. Cooperman, 619 F. Supp. 401, 1985-86 EHLR DEC. 557:178 (D.N.J.1985) (holding that where record indicated student had above average intellectual potential, was learning in a regular classroom, and had adjusted socially to classmates, she should be mainstreamed academically, rather than placed in a

hearing-impaired program); Thorncock v. Boise Independent School Dist. No.1, 1984-85 EHLR DEC. 556:477 (D.Idaho 1985) (holding that absent evidence that a child cannot meet the academic requirements of his IEP in a mainstreamed environment, any non-mainstreamed placement is legally insufficient); Hawaii Department of Education v. Katherine D., 727 F.2d 809, 1983-84 EHLR DEC. 555:276 (9th Cir. 1984) (holding that placement of student who required intermittent tracheostomy in homebound program did not meet LRE requirement since the student was capable of participating in regular classes with appropriate related services).

11. Ordover & Boundy, supra note 1, at 15.

See also Tokarcik v. Forest Hills School District, 665 F.2d 443 (3rd Cir. 1981), cert denied, 458 U.S. 1121 (1981); Mills v. Board of Education of the District of Columbia, 348 F.Supp. 866, 880-81 (D.D.C. 1972).

12. See, for example, Application of the Board of Education, No. 91-14 (Pittsford Central School District, May 3, 1991) (Pupil's learning style should be accommodated in his general education classes to decrease the need for resource-room help. Rather than providing student nine periods of resource room services each week, "resource room teacher's time would be better employed for some of those periods in providing consultative services to the pupil's other teachers." Id. at 9.); Application of a Child with a Handicapping Condition, No. 91-13 (City of Lockport School District, Apr. 18,1991) ("CSE should arrange for the provision of special education and related services with a minimal amount of disruption of the pupil's general education, such as providing special education and related services either at the beginning or end of the school day." Id. at 7-8.); Application of the Board of Education, No 90-19 (Schalmont Central School District, Dec. 11, 1990) (Because the IEP determines the appropriate education for a pupil, the relevant question is whether a disabled pupil "can achieve the goals of his or her IEP within a regular education program" with supplementary aids and service. "It is not necessary to demonstrate that [the pupil] will learn at approximately the same level as his or her nonhandicapped peers." Pupil could receive instruction in a regular class "with the assistance of a special education teacher serving as consultant." Id. at 4,6.); Application of a Child with a Handicapping Condition, No. 90-17 (Wayland Central School District, Dec. 27, 1990); Application of a Child with a Handicapping Condition, No. 90-16 (New York City School District, Dec. 18, 1990); Application of a Child with a Handicapping Condition, No. 90-14 (Westbury Union Free School District, Nov. 8, 1990); Application of a Child with a Handicapping Condition, No. 90-9 (Syosset Central School District, Oct. 25, 1990); Application of a Child with a

Handicapping Condition, No. 90-1 (Commack Union Free School District, July 31, 1990) (Concern expressed by the school psychologist and resource room teacher about the child's ability to function in a regular sixth grade classroom was "speculative" and an inadequate basis for recommending a more restrictive self-contained class.); Application of a Child with a Handicapping Condition, 17 EHLR 87 (New York City School District, Sept. 11, 1990) (Consultant teacher services provided within the general education classroom are more appropriate and less restrictive than resource room five days per week.); Application of a Child with a Handicapping Condition, 29 EDR 489 (Smithtown Central School District, June 19, 1990); Application of a Child with a Handicapping Condition, 29 EDR 339 (New York City School District, Mar. 30, 1990); Application of a Child with a Handicapping Condition, 29 EDR 339 (New York City School District, Mar. 23, 1990); Application of a Child with a Handicapping Condition, 29 EDR 130 (Smithtown Central School District, Oct. 31, 1989); Application of the Board of Education, 29 EDR 77 (Liverpool Central School District, Sept. 15, 1989) (Record suggested recommended change to more restrictive placement was the result of several behavioral incidents stemming from pupil's disabling condition and was unjustified when less drastic alternatives, such as providing necessary support services, were never attempted.); Application of a Child with a Handicapping Condition, 29 EDR 52 (Ramapo Central School District, Sept. 8, 1989); Application of a Child with a Handicapping Condition, 29 EDR 1 (Wayland Central School District, July 19, 1989); Application of a Child with a Handicapping Condition, 28 EDR 222 (New York City School District, Dec. 13, 1988); Application of a Child with a Handicapping Condition, 28 EDR 35 (Rockville Center Union Free School District, July 25, 1988); Application of a Child with a Handicapping Condition, 27 EDR 305 (Hilton Central School District, Mar. 22, 1988); Application of a Child with a Handicapping Condition, 26 EDR 495 (Northport-East Northport Union Free School District, June 5, 1987); Application of a Handicapped Child, 26 EDR 118 (Lindenhurst Union Free School District, Sept. 3, 1986); Application of a Handicapped Child, 25 EDR 353 (Smithtown Central School District, Mar. 27, 1986); Application of a Handicapped Child, 25 EDR 337 (Starpoint Central School District, Mar. 6, 1986) (The record indicated that an unduly restrictive BOCES placement was recommended solely because the pupil required counseling, but the district did not provide counseling on a regular basis to students in the regular high school); Application of a Handicapped Child, 25 EDR 81 (Goshen Central School District, Aug. 9, 1985); Application of a Handicapped Child, 24 EDR 65 (West Babylon Union Free School District, Aug. 14, 1984) (COH failed to consider increasing pupil's resource room instruction up to the maximum of 50% of the school day as an alternative to placement in a

special self-contained class.); Application of a Handicapped Child, 3 EHLR 503:154, 21 EDR 337 (City of Binghampton School District, Dec. 8, 1981); Application of a Handicapped Child, 3 EHLR 502:350, 21 EDR 97 (New York City School District, Aug. 14, 1981); Application of a Handicapped Child, 20 EDR 654 (Syosset Central School District, June 9, 1981); Application of a Handicapped Child, 20 EDR 426 (Sayville Union Free School District, Feb. 3, 1981); Application of a Handicapped Child, 18 EDR 483 (New York City School District, Feb. 27, 1979); Application of Orestes and Evelyn V., 17 EDR 414 (New York City School District, May 29, 1978).

13. See also, Application of a Child with a Handicapping Condition, No. 90-16 (New York City School District, Dec. 18, 1990) (Although the resource room teacher had recommended clinical counseling, the CSE provided group counseling by a guidance counselor. "[T]he record reveal[ed] no attempt by the CSE to provide a more intensive level of counseling, such as clinical counseling by a school psychologist," to enable the student to remain in the regular classroom. Id. at 6.); Application of a Child with a Handicapping Condition, No. 90-14 (Westbury Union Free School District, Nov. 8, 1990); Application of a Child with a Handicapping Condition, No. 90-11 (City of Mount Vernon School District, Nov. 19, 1990); Application of a Child with a Handicapping Condition, 28 EDR 95 (City of Buffalo School District, Aug. 30, 1988); Application of a Child with a Handicapping Condition, 28 EDR 35 (Rockville Center Union Free School District, July 25, 1988) (Student having trouble in the regular classroom should be offered resource room or remedial reading and language services before being considered for special class placement.); Application of a Handicapped Child, 26 EDR 118 (Lindenhurst Union Free School District, Sept. 3, 1986) (District made no programmatic adjustments to compensate for pupil's limited mobility and fine motor limitations, thus failing to prove that she was unable to benefit from a general educational program with appropriate supports and services.); Application of a Handicapped Child, 25 EDR 337 (Starpoint Central School District, Mar. 6, 1986) (Recommended BOCES placement was unduly restrictive and appeared to have been recommended only because it would allow the required counseling which was not available at the regular high school.); Application of a Handicapped Child, 22 EDR 515 (Phelps-Clifton Springs Central School District, Mar. 29, 1983) (Child's previous lack of success with mainstreaming could be attributed to the fact that she had not been provided with a teacher for the visually-impaired.); Application of a Handicapped Child, 3 EHLR 502:350, 21 EDR 97 (New York City School District, Aug. 14, 1981); Application of Orestes and Evelyn V., 17 EDR 414 (New York City School District, May 29, 1978).

14. See Application of a Child with a Handicapping Condition, 29 EDR 130 (Smithtown Central School District, Oct. 31, 1989); Application of a Child with a Handicapping Condition, 28 EDR 95 (City of Buffalo School District, Aug. 30, 1988); Application of a Child with a Handicapping Condition, 28 EDR 74 (New York City School District, Aug. 11, 1988); Application of a Child with a Handicapping Condition, 27 EDR 131 (Croton-Harmon Union Free School District, Nov. 24, 1987); Application of the Board of Education, 27 EDR 78 (New York City School District, Sept. 17, 1987); Application of a Handicapped Child, 26 EDR 173 (Brocton Central School District, Oct. 22, 1986); Application of a Handicapped Child, 26 EDR 62 (Deer Park Union Free School District, Aug. 14, 1986); Application of a Handicapped Child, 24 EDR 18 (Greenwich Central School District, July 20, 1984); Application of a Handicapped Child, 21 EDR 444 (Mattituck-Cutchoque Union Free School District, Oct. 12, 1983); Application of a Handicapped Child, 21 EDR 146 (Ichabod Crane Central School District, Aug. 25, 1981); Application of the Board of Education, 20 EDR 579 (Mattituck-Cutchogue Union Free School District, Apr. 29, 1981); Application of the Board of Education, 20 EDR 442 (New York City School District, Feb. 19, 1981).

15. 20 U.S.C. Sec. 1409(j)(1)(B)(iii) and (iv).

16. See also Burlington (CO) School District, 16 EHLR 459 (OCR 1989).

17. Ordover & Boundy, supra note 1, at 33-34.

18. See Larry P. v. Riles, 793 F.2d 969, 1985-86 EHLR DEC. 557:433 (9th Cir. 1986) (holding that the use of tests that were racially and culturally biased and not validated for the specific purpose by education agencies violated the Rehabilitation Act and EHA; because the use of such tests was not justified by educational necessity, and the tests had a discriminatory impact on African-American students, it violated Title VI.). See also Tauton (MA) School District, 16 EHLR 128 (OCR 1989) (District failed to ensure that trained personnel administered and interpreted tests and, thus, violated 34 C.F.R. Sec. 104.35(b)(1).); San Francisco (CA) Unified School District, 16 EHLR 194 (OCR 1989) (District violated federal regulations by failing to provide non-discriminatory evaluation procedures for Limited English Proficient (LEP) students and to consider their cultural and linguistic background as part of the evaluation process.); Whiteriver (AZ) Unified School District No. 20, EHLR 353:232 (OCR 1989) (District violated federal regulations by using verbal English language tests which measured students' current English skills and not their learning abilities, and by failing to document how a variety of sources, including Apache language background, was used

to determine special education placement of Native American students.); Coachella Valley (CA) Unified School District, EHLR 311:42 (OCR 1985) (District failed to establish standards and procedures to ensure that LEP students referred for special education evaluation were evaluated by qualified personnel using appropriate instruments.); Rochester (NY) School District, EHLR 311:09 (OCR 1980) (District failed to provide for identification of primary home language on referral forms, thus precluding appropriate identification and placement of bilingual students, and placed undue reliance on general intelligence testing by giving 41% of mentally disabled students only an IQ test before placement.); Hendry County (FL) School District, EHLR 257:71 (OCR 1979) (District failed to evaluate and place students in accordance with procedural requirements, including review of their social and cultural backgrounds); Special School District of St. Louis County (MO) (Region VII), EHLR 311:05 (OCR 1978) (District evaluation and placement procedures discriminated against minority students in educable mentally retarded program by failing to compare their evaluation results with the results of other students from similar cultural and racial backgrounds.).

19. See Appendix C for language of State regulations.

20. See also Application of a Child with a Handicapping Condition, 29 EDR 65 (New York City School District, Sept. 13, 1989) (No legal basis for classifying a child as learning disabled/speech-impaired existed where it was possible that the child's learning problems were primarily due to his linguistic and cultural background.); Application of a Handicapped Child, EHLR 501:182, 19 EDR 15 (South Country Central School District, July 5, 1979) (District gave inadequate consideration to a student's environmental, economic, and cultural background by failing to test the child's coding ability in his home language.).

APPENDIX B

RELEVANT FEDERAL LAW AND REGULATIONS

FEDERAL LAW
Individuals with Disabilities Education Act (IDEA)
20 U.S.C. Secs.1400-1485

Sec. 1412. Eligibility Requirements.

"In order to qualify for assistance under this subchapter in any fiscal year, a State shall demonstrate to the Secretary that the following conditions are met:

... (5) The State has established (A) procedural safeguards as required by Sec. 1415 of this title, (B) procedures to assure that, to the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are not disabled, and that special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannnot be achieved satisfactorily, and (C) procedures to assure that testing and evaluation materials and procedures utilized for the purposes of evaluation and placement of children with disabilities will be selected and administered so as not to be racially or culturally discriminatory. Such materials or procedures shall be provided and administered in the child's native language or mode of communication, unless it clearly is not feasible to do so, and no single procedure shall be the sole criterion for determining an appropriate educational program for a child."

Sec. 1418 Evaluation and program information.

-- requires Secretary to contract for "studies and investigations" to "gather information necessary for program and system improvements including

... (D) developing the capacity to implement practices having the potential to integrate children with disabilities, to the maximum extent appropriate, with children who are not disabled

... (F) strengthening programs and services to improve the progress of children and youth with disabilities while in special education and to effect a successful transition when such children and youth leave special education."

Sec. 1424 Programs for children with severe disabilities.

-- Subsection (a) provides that the Secretary may make grants or contract with appropriate public agencies and nonprofit

organizations to address the special education, related services, early intervention, and integration needs of infants, toddlers, children and youth with severe disabilities through--

(5) statewide projects, in conjunction with the State's plan under subchapter II of this chapter, to improve the quality of special education and related services for children and youth with severe disabilities, and to change the delivery of those services from segregated to integrated environments.

Sec. 1426 Programs for children and youth with serious emotional disturbance.

-- Subsection (a) authorizes the Secretary to make grants and enter into contracts for studies including:

"(3) developing and demonstrating strategies and approaches to reduce the use of out-of-community residential programs..." and

"(4) developing the knowledge, skills, and strategies for effective collaboration among special education, regular education, related services, and other professionals and agencies."

FEDERAL REGULATIONS.
34 C.F.R. Part 104
Reg. 104.33 Free appropriate public education.

(b) Appropriate education. (1) For the purpose of this subpart, the provision of an appropriate education is the provision of regular or special education and related aids and services that (i) are designed to meet individual educational needs of handicapped persons as adequately as the needs of nonhandicapped persons are met and (ii) are based upon adherence to procedures that satisfy the requirements of Regs. 104.34, 104.35, and 104.36.

Reg. 104.34 Educational setting.

(a) Academic setting. A recipient to which this subpart applies shall educate, or shall provide for the education of, each qualified handicapped person in its jurisdiction with persons who are not handicapped to the maximum extent appropriate to the needs of the handicapped person. A recipient shall place a handicapped person in the regular educational environment operated by the recipient unless it is demonstrated by the recipient that the education of the person in the regular environment with the use of supplementary aids and services cannot be achieved satisfactorily. Whenever a recipient places a person in a setting other than the regular educational environment pursuant to this paragraph, it shall take into account the proximity of the alternate setting to the person's home.

(b) Nonacademic setting. In providing or arranging for the provision of nonacademic and extracurricular services and activities, including meals, recess periods, and the services and activities set forth in Reg. 104.37(a)(2), a recipient shall ensure that handicapped persons participate with nonhandicapped persons in such activities and services to the maximum extent appropriate to the needs of the handicapped person in question.

Reg. 104.35 Evaluation and placement.

(b) Evaluation procedures. A recipient to which this subpart applies shall establish standards and procedures for the evaluation and placement of persons who, because of handicap, need or are believed to need special education or related services which ensure that:

(1) Tests and other evaluation materials have been validated for the specific purpose for which they are used and are administered by trained personnel in conformance with the instructions provided by their producer;

(2) Tests and other evaluation materials include those tailored to assess specific areas of educational need and not merely those which are designed to provide a single general intelligence quotient; and

(3) Tests are selected and administered so as best to ensure that, when a test is administered to a student with impaired sensory, manual, or speaking skills, the test results accurately reflect the student's aptitude or achievement level or whatever other factor the test purports to measure, rather than reflecting the student's impaired sensory, manual, or speaking skills (except where those skills are the factors that the test purports to measure).

Reg. 104.37 Nonacademic services.

(a) General. (1) A recipient to which this subpart applies shall provide nonacademic and extracurricular services and activities in such manner as is necessary to afford handicapped students an equal opportunity for participation in such services and activities.

Assistance to States for Education of Handicapped Children
34 C.F.R. Part 300
Reg. 300.132 Least Restrictive Environment

(a) Each annual program plan must include procedures which insure that the requirements in Regs. 300.550-300.556 of Subpart E are met.

(b) Each annual program plan must include the following information:

(1) The number of handicapped children in the State, within each disability category, who are participating in regular education programs, consistent with Regs. 300.550-300.556 of Subpart E.

(2) The number of handicapped children who are in separate classes or separate school facilities, or who are otherwise removed from the regular education environment.

Reg. 300.227 Participation in regular education programs

(a) Each application must include procedures to insure that to the maximum extent practicable, and consistent with Regs. 300.550-300.553 of Subpart E, the local education agency provides special services to enable handicapped children to participate in regular education programs.
(b) Each application must describe:
(1) The types of alternative placements that are available for handicapped children, and
(2) The number of handicapped children within each disability category who are served in each type of placement.

Reg. 300.305 Program Options

Each public agency shall take steps to insure that its handicapped children have available to them the variety of educational programs and services available to nonhandicapped children in the area served by the agency, including art, music, industrial arts, consumer and homemaking education and vocational education.

Reg. 300.385 Adoption of educational practices

(a) Each annual program must provide for a statewide system designed to adopt, where appropriate, promising educational practices and materials proven effective through research and demonstration.

Protection in Evaluation Procedures
Reg. 300.530 General.

(b) Testing and evaluation materials and procedures used for the purposes of evaluation and placement of handicapped children must be selected and administered so as not to be racially or culturally discriminatory.

Reg. 300.533 Placement procedures.

(a) In interpreting evaluation data and in making placement decisions, each public agency shall...
(4) Insure that the placement decision is made in conformity with the least restrictive environment rules in Regs. 300.550-300.554.

Least Restrictive Environment
Reg. 300.550 General.

(a) Each state educational agency shall insure that each public agency establishes and implements procedures which meet the requirements of Regs. 300.550-300.556.
(b) Each public agency shall insure:
(1) That to the maximum extent appropriate, handicapped children, including children in public or private institutions or other care facilities, are educated with children who are not handicapped, and
(2) That special classes, separate schooling or other removal of handicapped children from the regular educational environment occurs only when the nature or severity of the handicap is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

Reg. 300.551 Continuum of alternative placements.

(a) Each public agency shall insure that a continuum of alternative placements is available to meet the needs of handicapped children for special education and related services.
(b) The continuum required under paragraph (a) of this subsection must...
(2) Make provision for supplementary services (such as resource room or itinerant instruction) to be provided in conjunction with regular class placement.

Reg. 300.553 Non-academic settings.

In providing or arranging for the provision of non-academic and extra-curricular services and activities, including meals, recess periods, and the services and activities set forth in Reg. 300.306 of Subpart C, each public agency shall insure that each handicapped child participates with non-handicapped children in those services and activities to the maximum extent appropriate to the needs of that child.

Reg. 300.555 Technical assistance and training activities.

Each State educational agency shall carry out activities to insure that teachers and administrators in all public agencies:
(a) Are fully informed about their responsibilities for implementing Reg. 300.550, and
(b) Are provided with technical assistance and training necessary to assist them in this effort.

Reg. 300.556 Monitoring activities.

(a) The state educational agency shall carry out activities to insure that Reg. 300.550 is implemented by each public agency.
(b) If there is evidence that a public agency makes placements that are inconsistent with Reg. 300.550 of this subpart, the State educational agency:

(1) Shall review the public agency's justification for its actions, and

(2) Shall assist in planning and implementing any necessary corrective action.

APPENDIX C-- RELEVANT STATE LAW AND REGULATIONS

NEW YORK STATE EDUCATION LAW

N.Y. Educ. Law tit. 6 Sec. 4401-a (Consol. Supp. 1991).

5. "Special education services and programs shall be provided after the appropriateness of the resources of the regular education program, including educationally related support services, speech and language improvement services and remedial instruction, have been considered."

6. "If the committee on special education has determined that placement in special education services or programs is not appropriate for the child under consideration, a copy of the committee's recommendation and pertinent information supporting such recommendation shall be forwarded to the building administrator of the school which the child attends and to the parent or person in parental relationship to the child. The building administrator shall determine which educationally related support services or speech and language improvement services should be provided to the child in order to assist the child to benefit from a program of regular education and, to the extent available, shall assure that those services are provided."

N.Y. Educ. Law tit. 6 Sec. 4402 (Consol. Supp. 1991)
Duties of school districts.

2. a. "Each district shall provide to the maximum extent appropriate such [special education] services in a manner which enables children with handicapping conditions to participate in regular education services when appropriate."

N.Y. Educ. Law tit. 6 Sec. 4402 (Consol. Supp. 1991)
Taxation and Financial Administration
Article 73 Apportionment of Public Moneys
Sec. 3602

19. Excess cost aid for pupils with handicapping conditions.
b. "Weighted pupils with handicapping conditions shall be the attendance of pupils during the base year in programs approved in accordance with the provisions of Article 89 of this chapter in public schools and boards of cooperative educational services and shall be computed as follows:
(1) The attendance of pupils who have been determined by a Committee on Special Education either to require placement for sixty per centum or more of the school day in a special class, or to require home or hospital instruction for a period of more than sixty days, or to require special services or programs for more than sixty per centum of the

school day shall be multiplied by one and seven-tenths;
(2) The attendance of pupils who have been determined by a Committee on Special Education to require placement for: (i) twenty per centum or more of the school week in a resource room or to require special services or programs including related services for twenty per centum or more of the school week shall be multiplied by nine-tenths;
(3) The attendance of pupils who have been determined by a Committee on Special Education to require direct or indirect consultant teacher services, in accordance with regulations of the commissioners adopted for such purpose, shall be multiplied by eight-tenths;
(4) The attendance of pupils who have been determined by a Committee on Special Education to require two or more sessions a week of special instruction either in speech or in other special programs or services, including related services, shall be multiplied by thirteen-hundredths."

32. Educationally related support services apportionment (ERSSA).

1. "Eligible pupils are those pupils as defined by the commissioner, who with the provision of services would be able to maintain their placement in a program of regular education. Such pupils may receive educationally related support services in accordance with the provisions of Sec. 4401-a of this chapter or upon the referral of the building administrator, in consultation with appropriate personnel."

NEW YORK STATE REGULATIONS

8 NYCRR Sec. 200.1 Definitions

(v) Least restrictive environment means that placement of an individual pupil with a handicapping condition which:
(1) provides the special education needed by the pupil;
(2) provides for education of the pupil to the maximum extent appropriate with other pupils who do not have handicapping conditions; and
(3) is determined following consideration of the proximity of the placement to the pupil's place of residence.
(pp) Consultant teacher services means direct and/or indirect services, as defined in this subdivision, provided to a pupil with a handicapping condition who attends a regular education program on a full-time basis and/or to such a pupil's regular education teachers.

(1) Direct consultant teacher services means specially designed individualized or group instruction provided by a certified special education teacher to a pupil with a handicapping condition to aid such pupil to benefit from the pupil's regular education program.

(2) Indirect consultant teacher services means consultation provided by a certified special education teacher to regular education teachers to assist them in adjusting the learning environment and/or modifying their instructional methods to meet the individual needs of a pupil with a handicapping condition who attends their classes.

200.2 Board of education responsibilities.

(b) Written policy. Each board of education shall adopt written policy that:
(1) establishes administrative practices and procedures to ensure that pupils with handicapping conditions residing in the district have the opportunity to participate in school district programs, including extracurricular programs and activities, which are available to all other pupils enrolled in the public schools of the district;

200.4 Procedures for referral, evaluation, individualized education program (IEP) development, placement and review.

(a) Referral. A pupil suspected of having a handicapping condition shall be referred in writing to the chairperson of the district's Committee on Special Education or to the building administrator of the school which the pupil attends or is eligible to attend for an individual evaluation and determination of eligibility for special education programs and services.
(4) School districts shall ensure that:
(i) tests and other assessment procedures:
(a) are provided and administered in the child's dominant language or other mode of communication, unless it is clearly not feasible to do so;
(b) have been validated for the specific purpose for which they are used; and
(c) are administered by trained personnel in accordance with the instruction provided by those who developed such tests or procedures.
(ii) tests and other assessment procedures include those tailored to assess specific areas of educational need and not merely those which are designed to provide a general intelligence quotient;
(iii) tests are selected and administered to ensure that, when a test is administered to a child with impaired sensory, manual or speaking skills, the test results accurately reflect the child's aptitude or achievement level or whatever other factors the test purports to measure, rather than reflecting the child's impaired sensory, manual or speaking skills, except where those skills are factors which the test purports to measure;
(iv) no single procedure is used as the sole criterion for determining an appropriate educational program for a child;

[and] (vii) the evaluation includes observation of the pupil in the current educational setting;

200.6 Continuum of services.

(a) A pupil with a handicapping condition shall be provided with appropriate special education.
(1) To the maximum extent appropriate, pupils with handicapping conditions shall be provided special education in the least restrictive environment, as defined in section 200.1(v) of this Part.